



Standing Committee on the Ombudsman

Review of the Office of the Ombudsman



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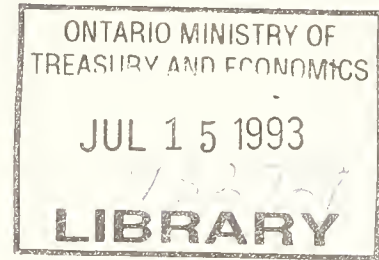
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2nd Session 35th Parliament
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LEGISLATIVE ASSEMBLY
ASSEMBLÉE LÉGISLATIVE

TORONTO, ONTARIO
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The Honourable David Warner, M.P.P.
Speaker of the Legislative Assembly

Sir,

Your Standing Committee on the Ombudsman has the honour to present its report on the review of the Office of the Ombudsman and commends it to the House.

A handwritten signature in cursive script, appearing to read 'Mark Morrow'.

Mark Morrow, M.P.P.
Chair

Queen's Park
April, 1993

Canadian Cataloguing in Publication Data

Ontario. Legislative Assembly. Standing Committee on the Ombudsman.
Review of the Office of the Ombudsman

ISBN 0-7778-1187-1

1. Ontario. Office of the Ombudsman. 2. Ombudsman--Ontario. I. Title.

KEO892.O4O52 1993

354.713009'1

C93-092558-0

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STANDING COMMITTEE ON THE OMBUDSMAN**

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INTRODUCTION

Terms of Reference and Conduct of Hearings

On May 28, 1992, the *Nineteenth Report (1991) of the Standing Committee on the Ombudsman* was tabled in the Legislature. The Report included the following recommendation:

That the Standing Committee on the Ombudsman undertake a comprehensive review of the Office of the Ombudsman which should include but not be limited to:

- **An examination of all aspects of the *Ombudsman Act*.**
- **The scope of the Ombudsman's jurisdiction.**
- **The performance of the Office of the Ombudsman in the exercise of its powers and functions.**
- **The adequacy of the resources of the Office of the Ombudsman to perform its various functions.**
- **The relationship of the Office of the Ombudsman to other organizations involved in hearing complaints about government actions.**
- **The mandate of and role to be played by the Standing Committee on the Ombudsman.**

And that the Committee hold hearings and consult as it deems appropriate and that it complete and report the results of its review by December 15, 1992.

On July 23, 1992, the Legislature authorized the Standing Committee on the Ombudsman to meet to conduct this review for two weeks during August 1992.

The Committee held public hearings in Toronto during the weeks of August 17 and August 24, 1992. In order to accommodate witnesses, and in light of the short timeframe, the hearings were extended into October and November 1992.

Prior to commencing the hearings, the Committee distributed written notices directly to groups and individuals it believed might have a special interest in the Ombudsman's work. These included all government ministries, selected government agencies and boards, non-governmental organizations potentially affected by expansion of the Ombudsman's jurisdiction, advocacy groups, the Ombudsman, former Ombudsmen and staff, former Counsel to the Standing Committee on the Ombudsman, academics and other groups and individuals. To further assist in its review, the Committee also wrote to other provincial Ombudsmen to request information on their practices and procedures, and to invite any other comments. The hearings were also advertised in selected newspapers across the province.

Witnesses were invited to provide either written or oral submissions and were asked to respond to a list of general questions concerning the Ombudsman's mandate, powers and procedures. Notices drew witnesses' attention to questions in which the Committee felt they might have a particular interest.

We received a broad cross-section of submissions. Lists of both the oral and written submissions are attached as appendices to this Report. The Committee carefully reviewed these submissions and the recommendations they contained and examined the experience of Ombudsmen in other jurisdictions. On the basis of this information we have drafted this report and make the recommendations contained herein.

Historical Context of the Review

The Office of the Ontario Ombudsman began operating in May 1975, although the *Ombudsman Act* itself was not proclaimed in force until July 10, 1975. Ontario's *Ombudsman Act* followed the adoption of similar legislation in most of the other provinces over the period from 1967 to 1975. The only provinces that do not have Ombudsmen are Prince Edward Island and, since 1990 when the Office was abolished, Newfoundland. There is no federal Ombudsman, although the

Commissioner of Official Languages and the Correctional Investigator provide similar services in their limited spheres of operation.

Most of the provinces, including Ontario, modeled their ombudsman schemes on legislation adopted in New Zealand in 1962.¹ The New Zealand model itself was a modified version of the Danish Ombudsman, which was a variation of the Swedish Ombudsman.² It is from Sweden that the term "ombudsman" derives and where the Ombudsman, in its modern form, was first established through inclusion in the 1809 Constitution.³

During the legislative debates preceding the passage of the *Ombudsman Act*, it was recognized that some operational experience would be required before it could be determined how the ombudsman concept could best be adapted to the Ontario context. This view was shared by the first Ontario Ombudsman, Arthur Maloney, who undertook at the time of his swearing in to provide a Blueprint for the Office of the Ombudsman, which would provide, in his words, "a basis not only for the organization and operation of the office in Ontario during the period of my tenure, but also discussing the role of the office in its larger aspect and suggesting directions that the office might take now and in the future."

Although it was originally intended that this study would be completed after Mr. Maloney's first year in office, he concluded that the Blueprint should be held off until there had been much more concrete experience. The *Blueprint for the Office of the Ontario Ombudsman* was completed in 1979. It provides a detailed overview of the operation of the office, and concludes with Mr. Maloney's proposals for a "model Ombudsman's office for Ontario." The implementation of his proposals for a "model" office required a number of amendments to the Act, which he included at the end of his report.

The legislative amendments proposed in Mr. Maloney's *Blueprint* were further developed by the second Ombudsman, Donald Morand, who in January 1981 presented a draft bill of amendments and policy submission to the government.

Over the next few years, Mr. Morand pursued discussions with the government with respect to the introduction of these amendments, as did the Select Committee on the Ombudsman. Despite these efforts, and the assurances of the government, amendments to the Act were not presented to the Legislature during Mr. Morand's term as Ombudsman.

Subsequent Ombudsman and Committees have continued to press for amendments. Most recently, former temporary Ombudsman, Eleanor Meslin, commented as follows in the *1988-89 Annual Report*:

The *Ombudsman Act* has not been amended since 1975. A list of amendments was prepared by Dr. Hill's predecessor, submitted to the then Attorney General, but not passed. Since then, Dr. Hill added several amendments, which he believed are necessary to improve the Ombudsman's effectiveness . . . Although submitted to the Attorney General at the beginning of Dr. Hill's tenure, they still have not been presented to the Legislature, despite requests by both the Ombudsman and the Standing Committee.⁴

Proposals for change have not only come from Ombudsmen. In September 1989, the Review of Ontario's Regulatory Agencies *Report (the Macaulay Report)* was completed by Robert Macaulay. Because this report dealt with the regulatory framework for government agencies and tribunals it examined the Ombudsman's role in reviewing these bodies. The Report raises a number of important issues on these investigations, as well as the Ombudsman's relationship with the Legislature and the Committee's exercise of its rule-making power.

As a result of the proposals presented by previous Ombudsmen and those in the *Macaulay Report*, the government finally introduced amendments to the Act in November, 1989. *Bill 80 - An Act to amend the Ombudsman Act and the Child and Family Services Act, 1984* included a number of the amendments which had been proposed by previous Ombudsmen. At the same time, however, *Bill 80*

included amendments which would have cut back the Ombudsman's jurisdiction, and in particular the Ombudsman's power to review the merits of tribunal decisions.

Bill 80 did not proceed past first reading and is now no longer before the Legislature. While not all of the amendments in *Bill 80* were seen favourably by the previous and present Ombudsman, its demise does mean that those concerns raised by Ombudsmen over the years, which it would have met, remain unaddressed.

In our *Nineteenth Report*, the first report since Bill 80 was introduced, we discussed these developments. It was our view that the proposals put forward by previous Ombudsmen and in the *Macaulay Report* merited examination. As well, we noted that seventeen years had passed since the Act was first adopted. During that time no general review of the effectiveness of the Office of the Ombudsman or the *Ombudsman Act* in meeting their objectives had been undertaken.⁵ Since in our view much had changed since the Act was first passed, both in terms of the demands on the Office of the Ontario Ombudsman and the experience of our own work and developments in other jurisdictions, we concluded that a more general review of the Office should be conducted.

Description of the *Ombudsman Act*

The following is a brief introductory description of the Ombudsman's mandate, powers and procedures. A more detailed discussion of specific matters is provided in the body of this report.

The Ombudsman's function is set out in s. 14 of the Act as follows:

. . . to investigate any decision or recommendation made or any act done or omitted in the course of the administration of a governmental organization and

affecting any person or body of persons in his, her or its personal capacity.

Only complaints brought by the person actually affected by an act or decision, by a member of the Assembly to whom a complaint is made by a person affected, or initiated on the Ombudsman's own motion, may be investigated. Complaints must be made in writing, though in practice the Ombudsman's office has traditionally assisted people in putting their complaint into writing.

Complaints must concern a governmental organization, which is defined as a Ministry, commission, board or other administrative unit of the Government of Ontario. The Ombudsman does not have jurisdiction over municipal, federal or private bodies. Certain other limits are placed on the Ombudsman's jurisdiction. The Ombudsman may not investigate the actions of judges or of any court, the deliberations and proceedings of the Executive Council or its committees, or the actions or decisions of legal advisers to the Crown, including persons acting as counsel to the Crown in relation to any proceedings.

Another limitation is that the Ombudsman may not investigate a complaint where there exists some further avenue of appeal, or a right to apply for a hearing on the merits of the case. This requirement ensures that the Ombudsman's role is one of last resort.

Confidentiality is an important element of the Ombudsman's work. Investigations are conducted in private, and the Ombudsman may not disclose any information received by him or her as Ombudsman, except as is necessary to establish grounds for his or her conclusions or recommendations in any report.

The Act also includes a number of protections designed to facilitate the effective and efficient work of the Ombudsman. They include protecting the Ombudsman's proceedings from judicial review, preventing the use of any information obtained or produced by the Ombudsman in any other proceedings, and protecting the

Ombudsman and staff members from any civil proceedings for anything done in good faith.

The Ombudsman has a broad range of powers to obtain information, and may choose to discontinue an investigation in a range of circumstances. The Ombudsman is required to notify a governmental organization of an investigation and must give it the opportunity to make representations where it appears that the Ombudsman may make a report which will adversely affect the organization.

In reviewing a complaint, the Ombudsman must decide whether the act or decision was, among other things, unreasonable or based on an unreasonable law or practice, and if so, whether a decision should be cancelled, varied, or reconsidered, or whether a practice should be altered or any other steps taken. Where any of these circumstances exist, the Ombudsman must report his or her opinion to the governmental organization. If within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman may then send a copy of the report and recommendations to the Premier, and may thereafter make a report to the Assembly. Reports that are made to the Legislature are referred to the Standing Committee on the Ombudsman which reviews them and reports back to the Legislature its recommendations concerning the matter. The Ombudsman has no power to enforce his or her recommendations.

Given that the Ombudsman's function is to investigate government, the Act sets the Ombudsman up as an Officer of the Legislature, not as an arm of the government. The *Public Service Act* and the *Public Service Pension Act* do not apply to the Ombudsman, and the Ombudsman is given a degree of independence with respect to the hiring of employees and the determination of their salary and remuneration and terms and conditions of employment. The Ombudsman may also lease such premises and acquire such equipment and supplies as are necessary for the efficient operation of his or her office.

The Ombudsman's budget is approved by the Legislature's Board of Internal Economy, and the Ombudsman reports directly to the Legislature. The Ombudsman is only removable by the Lieutenant Governor in Council on the address of the Assembly. The Legislature is given the power to make rules for the guidance of the Ombudsman which it delegates to the Standing Committee on the Ombudsman. All reports of the Ombudsman are also referred to the Committee.

Structure of the Report

The report is organized along the lines of the overview of the Act just presented. The first half is devoted to examining issues related to the Ombudsman's mandate, powers and procedures. This includes developments with respect to the scope of the Ombudsman's function, matters related to the Ombudsman's accessibility, the process for reviewing complaints and the Ombudsman's jurisdiction.

The second half of the report examines, in considerable detail, the Ombudsman's relationship with the government and the Legislature. Among the matters discussed are the Ombudsman's appointment and term of office, the funding of the Ombudsman, the Legislature's involvement in the oversight and direction of the Office, and the Ombudsman's reporting responsibilities. In analyzing these issues, we have sought to establish a relationship between the Ombudsman and the Legislature which would ensure the Ombudsman's independence from government and which would both facilitate the Ombudsman's work and provide a mechanism for assessing its achievements.

More generally, we have been guided in our review by our commitment to the Ombudsman as a key public institution. We believe that the Office of the Ombudsman can play a pivotal role in the achievement of social justice in our society. The mere existence of the Office of the Ombudsman is, as one witness commented, "another indication of the strength of our democratic process and the ideal level of social justice we constantly aspire for." It is because of the

significance we attach to this institution that we believe so strongly that the Ontario public must be provided with the most effective and efficient ombudsman services possible.

SCOPE OF THE OMBUDSMAN'S FUNCTION

Systemic Reviews

Occasionally complaints brought to the Ombudsman bring attention to a more pervasive, underlying problem in the practices, laws or administration of a governmental organization. Ombudsmen have historically examined such "systemic" problems, either in the context of a particular complaint, or, where a series of similar complaints are received, on the Ombudsman's own motion. These investigations fall within the Ombudsman's role since he or she is directed, in examining a complaint, to determine whether it involves an unreasonable law or practice, and, where appropriate, to recommend that they be altered or reconsidered.⁶

Witnesses varied in their views on this issue. Former Ombudsman Donald Morand believed that more of the Ombudsman's time needed to be spent on these matters. Another witness argued that the Ombudsman should consider undertaking a systemic review wherever there is a history of a significant number of complaints of a similar nature.

A number of other witnesses offered more qualified support for the Ombudsman examining problems of a systemic nature. A few commented that the Ombudsman's primary function should continue to be the impartial investigation of individual complaints. One witness argued further that while the Ombudsman should be a partner in the identification of systemic problems, and should be able to recommend that a systemic review be carried out, the Ombudsman should leave it to the Legislature to determine who is to carry out the review. Another agreed with this approach and expressed the concern that if greater resources were directed toward systemic reviews then individuals would run the risk of being denied access to a review of their concerns. One witness argued specifically that the Ombudsman's role in making recommendations concerning an organization's

policies was inappropriate, because it leads the Ombudsman to assume a very significant role in the organization's policy development process.

Of particular interest was a submission from the Ontario Human Rights Commission, which itself had been the subject of a recent systemic investigation by the Ombudsman. The Commission strongly endorsed the Ombudsman's role in conducting systemic reviews. However, it commented that its experience suggested that there is a need for guidelines to be established to govern the process followed in conducting such reviews.

Many other jurisdictions conduct systemic reviews, though the cost involved limits the ability of some offices to undertake them. Concerns about cost in fact are raised frequently in discussions about the proper balance to be struck between the Ombudsman's role in investigating individual complaints and the Ombudsman's role in conducting investigations of a systemic nature. The New Zealand Ombudsman has commented in this respect that:

Generally New Zealand Ombudsmen have seen the systems approach as too restricting and a diversion from the main task. It is our view that most complaints arise from mishandling or maladministration of a person's business with government and that such grievances need urgent attention. Only a minority arise from a faulty law, regulation, or policy, and if Ombudsmen start investing a significant proportion of their time and resources in the systems approach as a means of prevention of potential grievances from complainants, then they will fail the very people the role was designed to serve. Credibility will decline as a result.⁷

A review of Australia's Commonwealth Ombudsman argued that the principal role of the Ombudsman should remain the "investigation and resolution of complaints by individuals" and that systemic benefits would continue to arise from the performance of this task.⁸

We believe that the Ombudsman has an important role to play in identifying recurring or systemic problems, and that the Ombudsman should continue to actively respond to problems of this nature that come to his or her attention. However, we agree that the Ombudsman's primary function should continue to be the investigation of individual complaints, and that care must be taken to ensure that the conduct of systemic investigations does not detract from the Ombudsman's ability to respond to complaints from individuals.

With respect to concerns about the manner in which these reviews are conducted, we note that to a large extent the procedures set out in the *Ombudsman Act* are designed to facilitate the investigation of individual complaints, and may not anticipate sufficiently the manner in which systemic reviews are to be conducted. We believe it is important therefore to consider whether any rules should be created to govern such investigations. This should be done as part of a more general examination of the need for new rules for the guidance of the Ombudsman which we propose later in this report.

We therefore recommend:

1. **That the Committee consider, as part of its proposed review of the need for new rules, whether there is a need to formulate rules to govern how the Ombudsman conducts investigations of a systemic nature.**

Complaints Outside Jurisdiction and Information Requests

Increase in Number

The Ombudsman's office has always received a substantial number of complaints and inquiries which fall outside its mandate. Attempts have been made to assist these individuals as much as possible by either referring them to the appropriate agency, making an inquiry on their behalf or by simply providing information concerning, for example, the appeal mechanisms available to them. In recent

years, the number of complaints and inquiries of this nature has increased significantly. As Table 1 shows, in 1985-86 the Ombudsman examined 8,975, while in 1991-92 the Office considered 26,301, an increase of approximately 200%. In contrast, during this same period the total number of complaints within jurisdiction appears to have increased by only 30%, from 5,235 to 6,960.⁹

TABLE 1

STATISTICS ON COMPLAINTS AND INQUIRIES:
OFFICE OF THE OMBUDSMAN: 1980-81 to 1991-92

| Year | Complaints Within Jurisdiction | Complaints Outside Jurisdiction, Information Requests/Submissions | Total |
|-----------------------|--------------------------------|---|----------------------|
| 1980-81 | 3,602 | 7,267 | 10,869 |
| 1981-82 | 2,166 | 8,009 | 10,175 |
| 1982-83 | 4,460 ¹⁰ | 7,341 | 11,801 |
| 1983-84 | 5,563 | 8,280 | 13,843 ¹¹ |
| 1984-85 | 5,366 | 8,092 | 13,458 |
| 1985-86 | 5,235 | 8,975 | 14,210 |
| 1986-87 | 5,897 | 11,429 | 17,326 |
| 1987-88 | 4,572 | 16,601 | 21,173 |
| 1988-89 | 3,513 ¹² | 21,485 | 24,998 |
| 1989-90 | 3,819 | 26,357 | 30,176 |
| 1990-91 ¹³ | 6,843 ¹⁴ | 24,193 | 31,036 |
| 1991-92 | 6,960 ¹⁵ | 26,301 | 33,261 |

Source: Prepared by Legislative Research Service from the Ombudsman's Annual Reports from 1980-81 to 1991-92.

There could be various reasons for the increased number of complaints outside of the Ombudsman's mandate and information requests. During this period, former Ombudsman Dr. Hill increased efforts to make the public aware of the Ombudsman's services and on the outreach activities of the District Offices.

There might also be a more general desire on the part of individuals to have their complaints against government addressed and they have looked to the Ombudsman for some assistance or direction in this regard. On the other hand, one witness in

the hearings suggested that perhaps the Ombudsman was at times duplicating the services offered by other agencies and commented that in practice there was a "thin line between outreach and solicitation to use the Office of the Ombudsman as a first resort."

The substantial increase of complaints outside jurisdiction and information requests, in comparison with the number of complaints within jurisdiction, represents a significant shift in the function of the Ombudsman. For this reason, we think that it is important to explore its causes and its implications for the Ombudsman's role. We believe this could best be done by exploring these developments with the Ombudsman in the context of the Committee's examination of the Ombudsman's next annual report.

Resource Implications of Increase

The increase in the number of complaints and inquiries received by the Office of the Ombudsman also has potential resource implications. In this respect, the Ombudsman comments in her *Special Report* that there has been a threefold increase in the office's caseload over the past ten years, and notes that during the same period the budget (after discounting for inflation) and staff complement have remained effectively the same.¹⁶

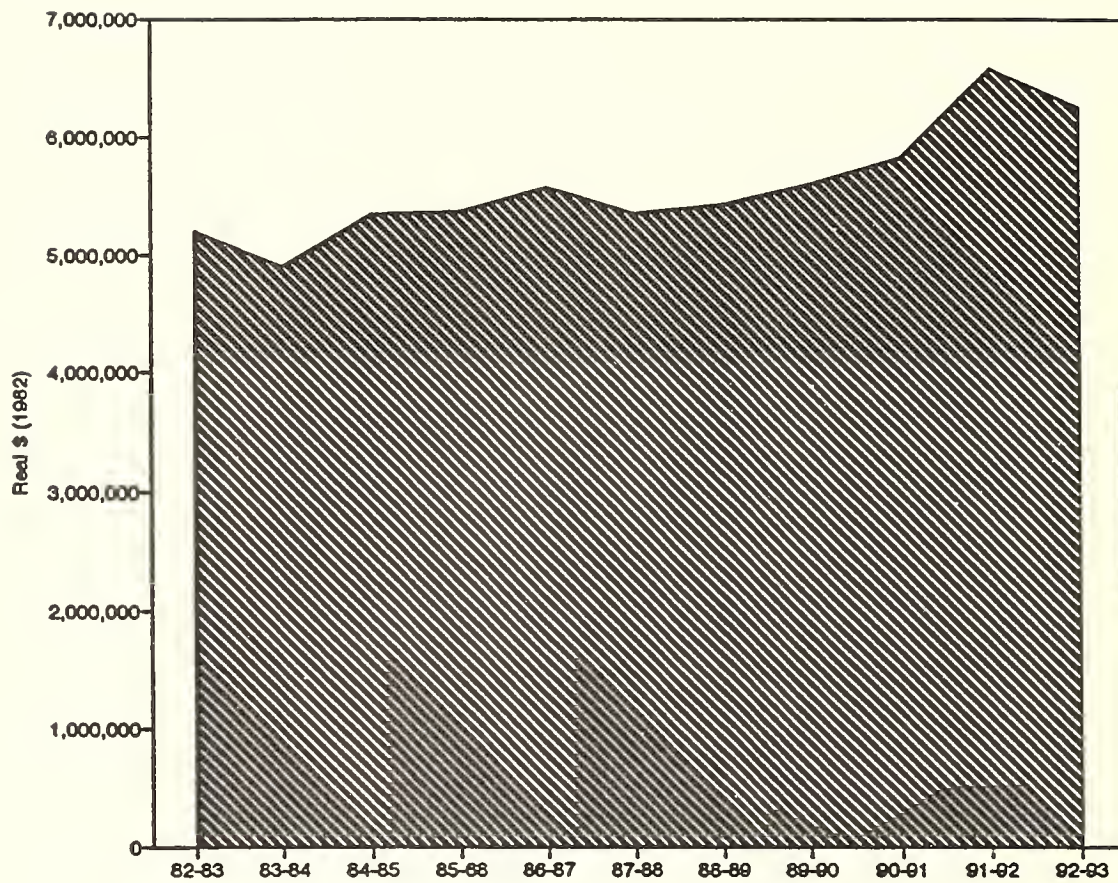
While we believe the Ombudsman's comments raise some important questions about the adequacy of the office's resources, two things must be noted. First of all, a threefold increase in the total number of complaints and inquiries does not necessarily mean the overall workload has tripled. That is, it is important to recognize that the increase of 300% referred to consists primarily of an increase in the number of complaints and inquiries outside jurisdiction or involving the provision of informal assistance. Such matters on average are less time-consuming than complaints within jurisdiction, so that an increase in their number would not be expected to give rise to a proportionate increase in the Ombudsman's overall workload.¹⁷

Secondly, during the period in question the Ombudsman's budget has in fact increased by over 20% in real terms (after discounting for inflation). As Table 2 illustrates, over the period from 1982-83 to 1992-93, the Ombudsman's budget has increased in real terms from \$5,202,000 to \$6,256,000. In nominal terms there has been an increase from \$5,202,000 to \$9,431,500. While this may or may not adequately provide for the changes which have occurred in the office, it does represent a real increase in the capacity of the Office and a significant and ongoing commitment by the Legislature to adequately respond to the needs of the Office of the Ombudsman.

While we are therefore sensitive to the Ombudsman's resource needs, a more detailed examination of the nature of the increase in the Ombudsman's caseload and of the allocation of existing resources would need to be undertaken before any decision could be made with respect to an increase in resources.

TABLE 2

OFFICE OF THE OMBUDSMAN: BUDGET 1982-83 TO 1992-93
(adjusted to 1982 real dollar amounts)



Source: Prepared by Legislative Research Service from the "Public Accounts of Ontario," 1982-83 to 1991-92 and "Estimates," 1992-93 (Ministry of Treasury and Economics); deflator based on "Ontario Economic Outlook," (Ministry of Treasury and Economics, 1991), p. 84.

AWARENESS AND ACCESSIBILITY

Title of "Ombudsman"

In the *1991-92 Annual Report*, the Ombudsman commented that it is frequently brought to her attention that the title "Ombudsman" has a sexist connotation. As the Ombudsman states:

Whether in the original Swedish, the "-man" portion of "Ombudsman" applies to the office holder or to the population represented, the English language connotation implies a male-only domain. I have received many commentaries that the title should go the way of "chairman", "workman", "foreman", as well as concern that "Ombudsperson" is an unsatisfactory substitute.¹⁸

Although the Ombudsman noted a number of other options used in different jurisdictions, she believed that none of them was completely satisfactory and suggested that the matter be given greater thought.

We received several suggestions from the public on this issue. Two witnesses in particular felt that the title should be made gender-neutral and proposed "Provincial Complaints Commissioner" and "Office of the Public Protector."

We also looked to other jurisdictions. In Nova Scotia, the possibility of changing the title of Ombudsman is presently under consideration. In Quebec, this issue was raised in the recent review conducted of the Office of the Public Protector. Several participants in that review commented that the French term "Protecteur du citoyen" does not reflect the fact that the Public Protector is also the protector of the province's female citizens.¹⁹ To address this concern, the Report recommends that it be replaced by "Protecteur des citoyens et des citoyennes." The Report also notes that the term "Protecteur" is in the masculine form, but concludes that to avoid confusion with other institutions and to preserve the Public Protector's fragile visibility it should be left as it is. However, the Report

commented that women appointed to the position may use the feminine form of the word.²⁰ The Netherlands expressly provides that if a woman is appointed Ombudsman then she shall be known as the National Ombudswoman.²¹

At least two jurisdictions have considered changing the title of their Ombudsman but decided against it. In Manitoba, some consideration was given in 1982 to changing the title to make it gender neutral, but it appears that it was concluded that this could not be done with the Swedish word.²² A similar decision was reached in New Zealand where, on the appointment of the first woman as Ombudsman, the Leader of the House stated that:

It is not intended to change the title "ombudsman" in order to accommodate the appointment. The concept and term "ombudsman" are of Swedish derivation, and there the word applies equally to men and women who hold the position. Sweden was not only the first country to create the position of ombudsman; it was also amongst the first to appoint a woman to that post.²³

The New Zealand Ombudsman has also commented that the English language uses many foreign words which the general population understands, and that it would be inappropriate to corrupt the word Ombudsman when the result would be to produce a meaningless term.²⁴

We recognize that the word Ombudsman is of Swedish derivation and that it is inclusive of both men and women.²⁵ We also accept that those people who are aware of the derivation of this term may use it inclusively. Our difficulty is that the majority of the people who encounter the Ombudsman, while perhaps having some sense that the word derives from a foreign language, may nonetheless believe that the "man" part of the term implies a male-only domain in the way terms such as "chairman" do.

We share, however, concerns about attempting to alter the title "Ombudsman" to address this problem. Suggestions such as "Ombudswoman" or "Ombudsperson" perhaps advance gender neutrality, but in so doing create a word which loses its original meaning in Swedish. We therefore attempted to find an English term which could replace it and which is gender-neutral. We looked for a term which would accurately describe the office's functions and, as the Ombudsman has suggested, be easy to understand and pronounce.

There are various possible titles which might be used to accurately describe the Ombudsman's function. Some possibilities used in other jurisdictions include:

- Public Complaints Commissioner (Israel, Nigeria);
- Commissioner for Complaints (Northern Ireland);
- Parliamentary Commissioner for Administrative Investigations (Western Australia and Queensland);
- Parliamentary Commissioner for Administration (Great Britain);
- Commissioner for Local Administration (England, Scotland, Wales);
- Commissioner for Administration (Cyprus); and
- Public Protector (Quebec).

Some other options are Commissioner for Citizens' Affairs, Public Complaints' Investigator, Provincial Complaints' Commissioner, and Commissioner for Complaints About Government Administration. More recently, the present Ombudsman has noted "Public Mediator" as a possibility.

In our view, none of these possibilities provide an adequate replacement for the title of "Ombudsman". We believe that the name "Ombudsman" has become synonymous with the place people go as a last resort when they have been treated unfairly by government and we are concerned that the public might not identify in the same way with these other alternatives. This identification is critical since the

public's awareness of the services offered by the Ombudsman is the key to making available the recourse for injustice that the Ombudsman provides.

While we therefore share concerns about the name "Ombudsman," we believe that this term should continue to be used.

Public Education and Outreach

Successive Ombudsmen have recognized the need to engage in public education. Over the years numerous and continuing efforts have been undertaken to publicize the function of the Ombudsman and to reach out to those communities and segments of the population who are least likely to be aware of the Ombudsman's services. In this latter respect, it has been confirmed on a number of occasions, in a wide range of jurisdictions, that "those least likely to know about the existence of the Ombudsmen, not to mention his capacity to assist them, are most likely those at the lower end of the socio-economic scale or, in other words, those least likely to be in a position to do anything on their own to have their grievance rectified."²⁶

Despite recognition of this problem and the efforts that have been undertaken to address it, awareness of the Ombudsman's services among those most vulnerable remains a problem. In 1991, the present Ombudsman commissioned a Public Opinion Survey which showed that 69% of people were aware of the Ombudsman and generally had an accurate perception of the Ombudsman's jurisdiction and mandate. However, this was lower than awareness of other bodies such as the Ontario Human Rights Commission (95%) and Worker's Compensation Board (97%). Even more importantly, the survey confirmed that those "most vulnerable"²⁷ were less likely to be aware of the Ombudsman's services, while having at the same time a higher proportion of complaints.

Other jurisdictions have recommended various plans to address these problems. In Australia, a recent report of its Administrative Review Council²⁸ argued that

the Ombudsman should identify parts of the community where the need for the services of the Office is greatest and carry out a properly planned, targeted and measured publicity campaign. A subsequent report of a review of the Office of the Commonwealth Ombudsman endorsed this approach.²⁹ The report argued, however, that rather than general publicity campaigns the Ombudsman should instead target low-income and disadvantaged groups. It also proposed that the Ombudsman review the current publicity given to the Office in the publications and public contact areas of the main government service providers. In particular, the report recommended that the Ombudsman encourage agencies to include reference to the Ombudsman's role in their brochures and generally work with those agencies in developing suitable means of conveying information to the public.

A recent review of Quebec's Public Protector recommended a similar approach.³⁰ The report suggested that the Public Protector develop an information program for target clientele with the Ministère des Communications. It also recommended that the Public Protector collaborate with the various government departments in order to make information on its services available at all government public service points, and that the Act be amended to provide that these departments and bodies be required to inform clientele of the services of the Public Protector. Finally, the report recommends that the Public Protector submit his or her plan of action for achieving these objectives to the Committee on Institutions at the same time that he or she submits the budgetary estimates.

The present Ombudsman continues to engage in a variety of public education activities and has taken a number of steps to address concerns raised in the recent opinion survey. A publicity campaign was launched in March 1992, and the Ombudsman reports that strategic public education plans, to target those whom the survey identified as being most vulnerable, have been developed for the Ombudsman's district offices.³¹ To assist in the implementation of these plans, the Ombudsman is developing a computerized information system using census and other demographic data to help identify population groups not being served.

The system will assist as well in monitoring the Ombudsman's public education activities.

We believe that these efforts need to be continued. However, we recognize that despite the efforts of successive Ombudsmen, problems persist with respect to the public's awareness of their services. We are concerned that while many different approaches have been tried there has been little or no monitoring of their success. Only by developing ways to monitor and measure the relative effectiveness of different options will we be able to identify how the limited resources available can best be utilized to address these problems.

As a start, we believe that the Ombudsman should develop a detailed, comprehensive plan of action, and that this plan should be presented to the Committee for discussion and feedback. This could be done through inclusion in the proposed Ombudsplan which, later in this report, we recommend the Ombudsman present to the Committee to outline proposed activities for each year.³²

While the precise initiatives will depend on various factors, we see merit in a number of the proposals made in the Australian and Quebec reports referred to above. We agree that those groups least likely to be aware of the Ombudsman's services should be targeted. We note in this respect, however, that a particular problem for these groups is a lack of awareness of the procedures that they will encounter when they bring their complaint to the Ombudsman. We believe it is important therefore that the education and promotional material distributed provide an explanation of the process that will be followed by the Ombudsman.

We agree as well that government departments and agencies should be required to make information on the Ombudsman's services available at all public service contact points. This could be particularly effective in increasing public awareness, and we are hopeful that this approach could reduce the need for other public education initiatives. After a time, therefore, it will be important to assess the

effectiveness of this strategy and to determine the extent to which other public education activities need to be continued.

We believe as well that the Ombudsman's reporting of his or her public education activities should be improved. In the past, Ombudsmen have reported on the nature of the activities that had been undertaken and were planned. However, there has been little specific discussion of how these initiatives fit within in an overall plan and the numbers reached, and little assessment of how well they advanced their objectives. While we recognize the difficulties in evaluating the success of educational activities, we believe more information could be presented. Later in this report we recommend that the Ombudsman provide statistics which will reflect the outreach work undertaken.³³ The developments the present Ombudsman has initiated with respect to data collection should be of assistance in this respect.

While we are pleased with the attention that all Ombudsmen have paid to this problem, we are concerned with the lack of a systematic approach and the failure to have in place the means to assess the effectiveness of initiatives undertaken. As with the Australian committee, we believe that effective public education requires proper planning, the targeting of groups and the measuring of results. While we recognize that the present Ombudsman has taken some steps toward these goals, we believe that a more general framework for planning and assessing public education initiatives is also needed.

We therefore recommend:

2. **That the Ombudsman present, as part of an annual ombudsplan, proposed public education initiatives for each fiscal year.**
3. **That the Ombudsman, in developing a public education program, target those groups least likely to be aware of the Ombudsman's services, and that information on the process followed in reviewing complaints be provided; and**

That government departments and agencies be required to make information on the Ombudsman's services available at all public service contact points.

- 4. That the Ombudsman report annually on the public education activities undertaken, and that this include a statement of specific objectives, the nature and number of activities undertaken, and an evaluation of how effective those programs were in advancing the stated objectives.**

A related proposal which previous Ombudsman Dan Hill put forward was that the Act be amended to provide that the Ombudsman is required to engage in public education activities. A proposed amendment to this effect was included in Bill 80.

As we indicate elsewhere in this report, it is important that the Act reflect actual practice. It is clear that all Ombudsmen have and should promote the public's awareness of the services they provide.

We therefore recommend:

- 5. That the Act be amended to provide that the Ombudsman may engage in public education to inform members of the public of the Ombudsman's function.**

COMPLAINT-REVIEW PROCESS

Complaints in Writing

A number of witnesses commented on the requirement that complaints must be made in writing. On the one hand, one witness argued that a person's signature is the least one can ask for to impress on a complainant that they are affirming that the information provided is correct to the best of his or her knowledge. On the other hand, one group argued that the ability to make verbal complaints would enhance access for those who are functionally illiterate. In this respect, one witness argued that while complaints should be in writing, staff assistance in preparing the request should be provided in situations in which literacy is a potential hindrance.

All provinces except Quebec make it a requirement that complaints be made in writing.³⁴ However, it appears that in practice most Ombudsmen take a flexible approach to this requirement. In his *Blueprint for the Office of the Ombudsman*, former Ontario Ombudsman Arthur Maloney explained that his practice was to accept complaints verbally, either by telephone or through a personal interview, and for his staff to commit the complaint to writing on the individual's behalf.³⁵ The guiding principle, in his view, was to place as few obstacles as possible in the path of a potential complainant. This practice was endorsed by a previous Standing Committee in 1975 which recommended that a rule be established to provide that the Ombudsman was required to offer such assistance to those individuals who were unable to adequately express themselves in writing.³⁶

A number of other provincial Ombudsmen indicated that they provide some form of assistance to help an individual formulate his or her complaint. One indicated that, as an alternative, his office may ask the person to find someone who can submit the complaint on their behalf. Several provincial Ombudsmen also acknowledged that in spite of the requirement in their Act that complaints must be in writing, they nonetheless accept telephone and personal interview complaints.

While most provinces have avoided the obstacles the written requirement might present, two jurisdictions have directly addressed this issue. In Quebec, it is left to the Public Protector's discretion to decide whether to require that an application for intervention be made in writing. This permits complaints to be received orally.³⁷ The Public Protector and his or her employees are also expressly required to help in the formulation of an application. In New Zealand, the *Ombudsman Act* was recently amended to provide that complaints may be made either orally or in writing. However, the Act further provides that if in fact a complaint is made orally then it must be put in writing as soon as practicable.³⁸

We believe that it is important for the Act to reflect actual practice. In our view, there is clearly a need at times for complaints to be received orally in order to make the Ombudsman's services more accessible. However, we agree that it is reasonable to expect that by a certain stage most complaints should be put into writing. If the assistance of the Ombudsman's office is required in this respect, then, as is the practice at present, we believe it should be provided.

For these reasons, we recommend:

6. That the Act be amended to provide that:

- **a complaint to the Ombudsman may be made orally or in writing;**
- **a complaint which is made orally shall be put in writing as soon as practicable; and**
- **the Ombudsman or his or her employees shall provide assistance in the formulation of a complaint to any person who requires it.**

Public Comment on Investigations

At present, the Ombudsman may not release information to the public during an investigation or upon its completion other than through the tabling of a special or

annual report with the Legislature. This prevents the Ombudsman from, for example, releasing a report publicly as a way of bringing a government agency's refusal to implement recommendations to light, commenting publicly that an investigation is being undertaken, or responding to public allegations about a governmental organization's actions which may have turned out to be unfounded.

Ombudsmen Maloney, Morand and Hill have all argued that the Ombudsman should be allowed to comment publicly when the Ombudsman believes it is in the public interest. In his *Blueprint for the Office of the Ontario Ombudsman*, Mr. Maloney argued that:

The power to make public a report where, in the discretion of the Ombudsman, it is in the public interest to do so is a power which I strongly feel is integral to the function of the Ombudsman's office. Obviously, consideration would have to be given in the exercise of this power to the sensibilities and wishes of any individual complainant so as to avoid any erosion of confidence on the part of the public that matters would not be indiscriminately made public, but I do not consider this a major obstacle.³⁹

In his submission to the Committee, John Bell confirmed that previous Ombudsmen had expressed frustration that they could not disclose sufficient information, and that in particular they would have liked to have had the ability to make public the existence of an investigation.

All other provincial Ombudsmen have the power to comment publicly on matters pertaining to the exercise of their functions or on any particular case investigated by them⁴⁰ (as does the New Zealand Ombudsman). There are mixed views, however, on when an Ombudsman should comment publicly.

On the one hand, the New Zealand Ombudsman stated that use of the media when an organization is hesitant to accept an Ombudsman's recommendation has proved

effective.⁴¹ Similarly, Quebec's Committee on Institutions argued that the deterrent or persuasive effect of occasionally threatening to bring certain unfair or abusive acts to the public's attention should not be underestimated. In light of the Ombudsman's lack of enforcement powers, such a recourse was essential.⁴²

On the other hand, the Alberta Ombudsman stated in his submission that while he has the power to comment publicly on cases, he is reluctant to do so. He will only comment if the complainant has indicated to the press that he or she wants him to. The Alberta Ombudsman also argued that the media should be made aware of recommendations through their presentation to the House, rather than by the Ombudsman going directly to them.⁴³ The Ombudsman in Victoria, Australia has also commented that he does not use the media as a means of trying to get justice in individual cases. He noted:

One of the difficulties in resorting to the media is to maintain the balance of being independent and impartial without showing the emotion that media involvement will often produce. I find that the use of the media by some agencies to get its views across often generates antagonism rather than sympathy.⁴⁴

Even in Quebec, where, as noted, reports are occasionally released publicly, the Public Protector is cautious not to use this power in a way which might be counterproductive or draw the Public Protector into an adversarial or political situation inconsistent with his or her role.⁴⁵

Witnesses in our hearings were also divided. One government board stated that since its proceedings were public it had no difficulty with the Ombudsman making a report public. However, another agency argued that the power to publicly disclose final reports would bring a glare of publicity to the issue which might be counter-productive.

We do not believe that it is either necessary or prudent for the Ontario Ombudsman to release and discuss reports with the media for the purpose of bringing greater pressure on a government agency to implement the Ombudsman's recommendations. In our view, this is unnecessary in Ontario because unlike many jurisdictions where reports to the Legislature are not subsequently addressed, we have a well-established mechanism for the Legislature's consideration of these matters. This ensures that considerable pressures are brought to bear on the organizations involved to justify their positions. At the same time, the Committee's review of these cases brings with it media attention which can serve the very purpose intended by a power to raise a matter directly with the media.

We also share concerns about the potential for the Ombudsman to be drawn into a more adversarial and antagonistic relationship with the government. While this might be avoided by a judicious exercise of this power, we do not believe it is necessary to embark on this course because of the other avenues available.

The Ombudsman should, however, have the power to comment publicly in certain other situations. We agree that this ability would be useful, as Ombudsman Maloney pointed out, to exonerate individuals or governmental organizations that have been the subject of public allegations which the Ombudsman's investigation has proved to be unfounded. While the Ombudsman's special and annual reports will enable him or her to eventually clarify such concerns, a more timely public statement would in some instances be more effective.

Public comment might also be helpful to confirm that the Ombudsman is to conduct a particular investigation where this has been suggested in the media. Providing such confirmation and some indication of the precise scope of the review can prevent confusion and inaccurate judgments about the actions of those involved. We would note, however, that the Ombudsman should not be able to comment on a matter during the course of its investigation.

We therefore recommend:

7. **That the Act be amended to provide that the Ombudsman may, where he or she considers it to be in the public interest or in the interests of any person or governmental organization, comment publicly in order to make known the existence of an investigation or the outcome of a particular case; and**

That the amendment should further provide that no such comments may be made during the course of an investigation and that no such comments may be made concerning the merits of a complaint to be investigated or for the purpose of achieving implementation of the Ombudsman's recommendations.

Special Reports on Performance of Duties

A related issue concerns the Ombudsman's limited ability to report on matters concerning the exercise of his or her responsibilities. At present, the Ombudsman may only comment on these matters in the annual report. Both Ombudsman Maloney and Morand proposed amendments which would have permitted special reports to be made dealing with these matters. Bill 80 also included a provision to this effect.

We believe that the Ombudsman should have the ability to report on matters related to his or her duties as they arise, rather than having to wait for the annual report. Our intention would be, however, that this recourse only be used when necessary and that it not be used in a way which would lead to unnecessary additional costs.

We therefore recommend:

8. **That the Act be amended to provide that the Ombudsman may make special reports to the Assembly respecting any matter relating generally to the performance of the Ombudsman's duties.**

Problems With Respect to the *Freedom of Information and Protection of Privacy Act*

In her 1991-92 Annual Report, the Ombudsman brought to our attention a problem which had arisen with respect to the disclosure, under the *Freedom of Information and Protection of Privacy Act*, of certain documents provided by the Ombudsman in confidence to a governmental organization.

The facts were as follows. An individual requested disclosure of documents which had been provided to the Ministry of Municipal Affairs and Housing (but since transferred to the Ministry of Government Services) by the Ombudsman in the course of an investigation. The documents were provided to give the Ministry an opportunity to respond to the Ombudsman's tentative recommendations, which was part of the process required by the Act. Because the documents contained sensitive information, the then Ombudsman had reminded the Ministry that documents provided to it must be kept confidential.

The Ministry refused to disclose the documents to the individual and an appeal was made to the Information and Privacy Commissioner. Among other things, the Ombudsman argued before the Commissioner that because her office is not covered by the *Freedom of Information and Protection of Privacy Act* it would be inappropriate to interpret it to apply to records sent by the Ombudsman which might be found in the possession of an institution which was.

The Commissioner reached a number of conclusions that significantly impact on the Ombudsman. To begin, he concluded that the mere fact that the information had originated from a non-institution such as the Ombudsman was insufficient to deny access to the documents, since to limit access for this reason "would be to remove a significant amount of information from the right of public access, and would be contrary to the stated purposes and intent of the Act." The key issues, he stated, were whether the information was in the custody or control of an institution covered by the Act, whether the Ministry would be violating the

Ombudsman Act by providing it, and whether the documents concerned "personal information" which was exempt from disclosure. After considering these issues the Commissioner concluded that the documents were in the custody of the Ministry and that disclosure of the information would not violate the *Ombudsman Act*. The Commissioner also concluded that while some of the information was personal information which was exempt, some of the records were not and should be disclosed.

In reaching this conclusion the Commissioner was aware of the Ombudsman's concerns and commented as follows:

In reaching the conclusion that Records 1 and 3 were in the custody of the institution I took into consideration the two main purposes of the Act as well as the potential implications this decision could have for the practices of the Ombudsman. In my view, the conclusion that these records are in the custody of the institution is in keeping with the two central purposes of the Act — access to information and protection of individual privacy. In saying this I note that the result of the application of the Act to these records is such that sensitive personal information has not been disclosed.⁴⁶

Since documents are regularly provided to governmental organizations, this decision is of considerable concern to the Ombudsman. To avoid the possibility of confidential documents being disclosed by a governmental agency the Ombudsman has adjusted her investigative practices. The Ombudsman now, instead of providing tentative findings in writing, presents them verbally. This approach, in the Ombudsman's view, is unsatisfactory since it does not give the governmental organization involved an opportunity to review carefully her findings, and also causes delays and frustration for members of the public.

Witnesses in our hearings confirmed that the present situation is unworkable. One government agency commented that as well as resorting to oral briefings the Ombudsman gives agencies the option of accepting a written report with the

names of all individuals deleted, and on the condition that the original copy is to be returned to the Ombudsman and all other copies destroyed. The omission of names, it was argued, leads to much wasted time in trying to identify the different characters upon whose evidence the Ombudsman is relying for her conclusion. Management Board of Cabinet, which is responsible for the *Freedom of Information and Protection of Privacy Act*, also observed that the legal uncertainty surrounding this issue had created problems for ministries in determining what records could be disclosed to parties where these records may pertain to the Ombudsman. It commented that a clearer definition of what records are deemed confidential under the *Ombudsman Act*, with specific reference to those records actually in the custody of ministries, would be of great assistance.

The present situation is clearly unsatisfactory. Governmental organizations must be given sufficient information to enable them to properly assess and respond to complaints made against them. This must be done, however, in a way which ensures that the confidentiality of those involved in an Ombudsman's investigation is properly respected. The key issue therefore is whether the *Freedom of Information and Protection of Privacy Act* adequately safeguards the confidentiality of individuals who provide information to the Ombudsman, or whether an amendment to the Act is needed to ensure this.

One group argued that the *Freedom of Information and Protection of Privacy Act* already does provide adequate protection. In particular, they pointed to the fact that the various exemptions provide sufficient guidelines on whether disclosure is in the public interest, and that the Commissioner's role as an independent review body ensures an adequate mechanism to prevent any breach of confidentiality. Ultimately, it was argued, the avenue of judicial review provides a final level of scrutiny into the issue.

The Ombudsman, on the other hand, has argued that the Act should be amended.⁴⁷ In the Ombudsman's view documents provided by her to governmental organizations within the scope of her duty of confidentiality should

not be publicly accessible. In part, the Ombudsman asserts that the Act was not intended to give the Commissioner access to such information, pointing to s. 67(2), which provides that "confidentiality" provisions similar to the Ombudsman's prevail over the Act.⁴⁸ The Ombudsman argues that because her confidentiality provision meets similar criteria⁴⁹ it too should prevail over the Act.

We agree that whether a special exemption is required to protect the Ombudsman's confidentiality interests depends in part on the similarity between the confidentiality provisions referred to in the Act and the Ombudsman's own confidentiality needs. However, we believe that s. 67(2) itself was not intended to address this situation. This is because section 67(2) of the *Freedom of Information and Protection of Privacy Act* is directed toward protecting the confidentiality interests of institutions which are covered by the Act. It serves to exempt these institutions to the extent that they have received information confidentially. Institutions such as the Ombudsman, which are not covered by the Act, do not require a special exemption for information received confidentially because the Ombudsman is not required to disclose any information under the Act.⁵⁰

Moreover, even if the Ombudsman's confidentiality provision were included in s. 67(2) it would not prevent disclosure of documents provided by the Ombudsman to government institutions. This is because the confidentiality provision in the *Ombudsman Act*, as it is presently written, applies only to the Ombudsman,⁵¹ and does not apply to government institutions in their custody of these records. Only if this were the case would it be helpful to specify that the provision prevailed over the Act.

Nonetheless, as we indicated, we believe that the decision as to how confidential documents in the custody of an institution should be treated depends on considerations similar to those used to determine which confidentiality provisions were to be included in s. 67(2) of the Act. The policy paper primarily responsible for the content of s. 67(2) is Management Board of Cabinet's *Report on s. 67(2)*

of the *Freedom of Information and Protection of Privacy Act*. We have examined the Board's analysis in order to identify the considerations it used in selecting the confidentiality provisions which should prevail over the Act.

The report examined the confidentiality provisions of each of the institutions covered by the Act⁵². The basic approach taken was to ask whether the interests protected by the particular confidentiality provision were adequately safeguarded by the existing exemptions in the Act. If they were, then it was argued that the Act should be relied upon. If these interests were not and there was a compelling policy interest to justify some special protection in the Act then a specific exemption would be considered. If an exemption was required, then the information to be exempted had to be as limited and specific as possible.

One of the confidentiality provisions examined concerned the *Securities Act*. We believe that the Board's analysis of this provision provides an important parallel with the present situation. The Board noted that the Ontario Securities Commission has an extraordinary power to compel individuals to respond to questions which can result in individuals revealing intimate personal details. In considering the adequacy of the existing exemptions under the Act to protect against disclosure of this information the Board observed:

While much of the information would be exempt under ss. 14, 17 and 21 of the *Freedom of Information and Protection of Privacy Act*, it is important to be able to assure individuals at the outset of the investigation that their information will be held in the strictest confidence. This absolute assurance of confidentiality may be viewed as a fair exchange for the fact that an individual has no choice but to answer questions put to him or her under oath by the investigator.⁵³

Such considerations are also an important element of Ombudsman institutions across the country and around the world:

This is one of the great strengths of the Ombudsman system. Complainants, governmental agencies and third parties are assured that because of the secrecy requirements, information they provide to the Ombudsman will remain confidential, and to the extent that it is disclosed, may not be used against them in any other proceeding. This knowledge makes the suppliers of information more forthcoming with information and makes the Ombudsman that much more effective.⁵⁴

We believe that, like the Securities Commission, the Ombudsman must be able to assure individuals at the outset of an investigation that their information will be held in the strictest confidence. In our view, this extends to assuring them that the governmental organizations will themselves be required to keep the information disclosed to them in confidence.

We are not convinced, however, that the existing exemptions do not adequately enable the Ombudsman to provide this assurance. Before we could make this judgement, we believe it would be necessary to identify in some detail the nature of the information normally provided by the Ombudsman to governmental organizations, and to assess whether the existing exemptions provide sufficient protection for the privacy interests concerned.

We believe that to properly make this determination we should consult with the Ombudsman, the Information and Privacy Commissioner, and Management Board of Cabinet. Our object would be to identify any confidential information which may not be adequately protected by the existing exemptions. Regard should also be had to whether there are other bodies which face problems similar to the Ombudsman, how they are dealt with and what impact the Ombudsman's exemption from the *Freedom of Information and Protection of Privacy Act* might have on the broader objects of that Act. Once this review is undertaken, the scope and terms of a possible exemption could then be considered.

We therefore recommend:

9. That the Standing Committee on the Ombudsman consult with the Ombudsman, the Information and Privacy Commissioner and Management Board of Cabinet, to determine whether confidential information provided by the Ombudsman to governmental organizations should be specifically exempted from disclosure under the *Freedom of Information and Protection of Privacy Act*.

Court Applications to Interpret Provisions of the Act

The *Ombudsman Act* provides that the Ombudsman may apply to the Divisional Court to determine whether he or she has jurisdiction to investigate a particular case or class of cases. Both Ombudsman Maloney and Ombudsman Morand argued that they should have a more general power to make court applications to determine any question which concerned the exercise of their duties and powers.⁵⁵ One of the proposed amendments in Bill 80 would have addressed this concern. Subsection 6(2) of that bill provided in part that:

The Ombudsman may apply to the Divisional Court for a declaratory order,

- (a) concerning the Ombudsman's jurisdiction to investigate any case or class of cases under this Act; or
- (b) concerning the interpretation of any provision of this Act.

We believe that this would be a useful amendment. We note that while most provinces are also limited to making applications only with respect to questions of jurisdiction, Quebec's Public Protector has the power to bring a motion to determine questions concerning both his or her competence and powers.

We therefore recommend:

10. That s. 14(5) of the Act be amended to provide that the Ombudsman may apply to the Divisional Court for a declaratory order,
 - (a) concerning the Ombudsman's jurisdiction to investigate any case or class of cases under this Act; or
 - (b) concerning the interpretation of any provision of this Act.

Government's Ability to Implement the Ombudsman's Recommendations

A problem which occasionally arises is that a governmental organization which is otherwise prepared to implement the Ombudsman's recommendation may not have the authority to do so. This problem has arisen in particular in two instances.

Payments to Complainants

The Ombudsman sometimes recommends that a governmental organization make a payment to a complainant. It has been argued, however, that if the organization does not otherwise have the authority to make the payment then the Ombudsman's recommendation does not provide sufficient authority to do so.⁵⁶

The Committee examined this issue in its *Third Report (1977)*.⁵⁷ It recognized that there were circumstances where it would be appropriate to make recommendations of this nature and commented that the Legislature never intended that such a gap would exist in the Ombudsman's ability to exercise his or her functions under the Act. The Committee therefore recommended that the necessary amendments be made to provide that when the Ombudsman has made a recommendation that money be paid and the recommendation has been accepted by the organization, then "a lawful authority" exists for the money to be paid out of the Consolidated Revenue Fund. Former Ombudsman Dan Hill in his 1987-88 *Annual Report* reiterated the need for the Act to be amended in this way.⁵⁸

In response to these recommendations, the government included in Bill 80 amendments which would have addressed this problem. Specifically, the bill provided that, where the Ombudsman had recommended that a payment be made, the minister could authorize the payment if it was under \$1,000. If it was greater than \$1,000 then the Lieutenant Governor in Council, on the minister's recommendation, could authorize the payment. Bill 80 also provided that payments would be made out of the Consolidated Revenue Fund, and could only be made under this provision if there existed no other authority to make the payment.

We agree that the Act should be amended in this way. There occasionally arise circumstances where the most appropriate recommendation by the Ombudsman is that a sum of money be paid. In such instances, the lack of adequate governmental authority to respond to the recommendation serves to frustrate both the Ombudsman's ability to perform his or her functions and the governmental organization's willingness to address the situation.

We therefore recommend:

- 11. That the Act be amended to enable governmental organizations to make payments to complainants where the Ombudsman has recommended that such a payment be made.**

Ability to Reconsider Decisions

The Ombudsman often directs that a governmental organization's decision be reconsidered. While a number of governmental organizations have the power and established procedures for reconsidering decisions, some do not. For this reason, Dr. Hill argued that the Act should be amended to allow governmental organizations to reconsider their decisions where their current legislation did not provide for this.

In response to Dr. Hill's concerns, Bill 80 proposed a procedure which would enable all governmental organizations to reconsider their decisions. This procedure required that notice of the reconsideration be given to all persons who were entitled to be heard with respect to the original decision or recommendation, and that these individuals be given an opportunity to make representations. This provision would have applied only to organizations that did not already have a power to reconsider a decision on the recommendation of the Ombudsman.

Submissions in our hearings suggested that the ability to reconsider decisions was particularly needed in the context of administrative tribunals. Ron Ellis, Chair of the Workers' Compensation Appeals Tribunal (WCAT), discussed the delicate relationship between the Ombudsman and administrative tribunals. He commented that WCAT's ability to reconsider decisions has enabled it and the Ombudsman to avoid difficult problems with respect to the Ombudsman's role in reviewing the merits of tribunal decisions. However, he also commented on the problems faced by other tribunals which do not have such a power:

It is important to understand that this protocol is viable from the tribunal's perspective only because of the fact that WCAT has an explicit statutory power to reconsider its own decisions whenever it considers it "advisable" to do so. In my view, the power to reconsider is what makes it possible for WCAT to deal appropriately with the Ombudsman on issues concerning the merits of its decisions. For a tribunal with no power to reconsider its decisions, the relationship remains, in my view, very problematic — the Ombudsman has the jurisdiction to review and criticize the decisions on their merits but the tribunal has no power to do anything about the criticism.⁵⁹

We believe that this problem should be addressed. We agree with the general direction taken in Bill 80, and believe that the procedures recommended are important to safeguard the interests of all those who may be affected by a tribunal's decision to reconsider a matter.

We therefore recommend:

12. That the Act be amended to provide that governmental organizations which do not already have a power to reconsider their decisions may authorize the reconsideration of a decision or recommendation upon receiving a recommendation of the Ombudsman to do so; and

That the Act be amended to provide that notice of the reconsideration shall be given to those who were entitled to be heard with respect to the original decision, and to provide that those individuals be given the opportunity to make representations respecting the reconsideration of the decision.

JURISDICTION

Schedule of Organizations

The Ombudsman may investigate the actions or decisions of any "governmental organization," which includes any Ministry, commission, board or other administrative unit of the Government of Ontario, and includes any agency thereof.

Both former Ombudsmen Maloney and Morand felt that this general definition left too much uncertainty with respect to the Ombudsman's jurisdiction, with the result that time-consuming and costly disagreements with government bodies would arise over the Ombudsman's ability to investigate. To address this problem, both proposed that the general definition should be supplemented by a schedule of governmental organizations. They also suggested that to provide for the fact that governmental bodies often change and new ones are created, the Act should make it easy to amend the schedule. It was recommended that this be done by providing that the Lieutenant Governor in Council could by order add governmental organizations to the schedule. Most witnesses who addressed this issue in our hearings agreed that a schedule would be useful. One pointed out that such a schedule could also be included or referred to in brochures or publicity materials.

In examining other jurisdictions, we found it interesting that all of the other provinces contain a formula in their ombudsman legislation for determining whether or not a particular body is within the Ombudsman's power to investigate.⁶⁰ This is done in a variety of ways. For example, British Columbia and New Brunswick set out the bodies within the Ombudsman's jurisdiction in a schedule to the Act. Other provinces, such as Saskatchewan, include a formula which determines whether a body is an agency of government in the legislation itself.

Where a schedule is used there are at least two different approaches. The New Zealand model specifies each governmental organization within the Ombudsman's jurisdiction. This is the approach Ombudsman Maloney envisioned. On the other hand, the British Columbia and New Brunswick schedules define the bodies covered more generically, referring to government departments, municipalities and school boards, as well as providing a formula for identifying whether a body is covered by the Act.

We agree that the Ombudsman's jurisdiction should be more clearly defined. We believe a schedule would be helpful, but believe that the precise form should be determined through a process of consultation with the Ombudsman. It may also be necessary to consult with some governmental organizations in the event that questions arise as to the Ombudsman's existing jurisdiction over them. It will also be important to ensure that there is a flexible process for changing the schedule.

We therefore recommend:

- 13. That the Act be amended to provide that for the purposes of the Act a governmental organization includes a governmental organization set out in the Schedule;**

That the Act be amended to provide that the Lieutenant Governor in Council may add governmental organizations to the Schedule by order; and

That the Committee consult with the Ombudsman and any governmental organization concerned to identify the form of the Schedule.

Clarification of Existing Jurisdiction

Administrative Tribunals

The Courts have interpreted the Ombudsman's jurisdiction to include reviewing the decisions of administrative tribunals. These court decisions and the question

of whether the Ombudsman should investigate tribunal decisions have been continuing topics of debate.

While a number of witnesses argued that the Ombudsman should review the procedures and administration of tribunals, most witnesses felt that it was inappropriate for the Ombudsman to review the merits of decisions. Former Ombudsman Donald Morand argued that the Ombudsman should not have this power because rights of appeal exist from board decisions, experts are hired to run boards and the Ombudsman's employees cannot be expected to be experts in every field. Many of the boards and agencies which appeared made similar arguments. They added that the ability to bring judicial review applications and the fact that some boards do not have the ability to change decisions in response to the Ombudsman's recommendations are further reasons why the Ombudsman should not have this power.

On the other hand, we received a particularly helpful submission from the Chair of the Workers' Compensation Appeals Tribunal, Ron Ellis, arguing that there was a role for the Ombudsman to play in the review of tribunal decisions. Mr. Ellis explained that the Ombudsman's review of the merits of tribunal decisions has sometimes contributed significantly to the development of needed reform, particularly in the workers' compensation field where prior to 1985 the Ombudsman played an important role in laying bare the significant shortcomings of the Board's internal appeal body.

More recently, he indicated that the Ombudsman and WCAT had worked out an effective method of dealing with complaints. Typically, the Ombudsman will notify WCAT that there may be grounds for an adverse report and give it an opportunity to make representations as to why such a conclusion is not justified. A difficulty arises at this stage since the tribunal cannot provide a justification for the decision because it is not permitted to supplement the reasons given by the panel in question. As a result, WCAT treats the Ombudsman's letter as a request for reconsideration. It is therefore sent to a new panel which is asked to

determine whether the Ombudsman's report provides grounds that meet the tribunal's criteria for re-opening a decision. This reconsideration may or may not result in the case being reopened. As he states:

The results in these cases are not foregone conclusions. It is not uncommon for the new panel to conclude that the Ombudsman's report does not provide grounds for re-opening the decision which satisfy the Tribunal's criteria or, having agreed that the criteria for re-opening have been met, to find at the end of the re-hearing process that it agrees with the original panel's decision, so that in the end nothing is changed.⁶¹

Mr. Ellis added that the Ombudsman has accepted this approach. The Ombudsman's practice appears to be that if the tribunal's reconsideration steps are conducted in good faith and do not themselves produce decisions which are unreasonable, there is no basis for further complaint.

The Ombudsman's review of decisions in this way, he noted, has in some instances provided WCAT with a valuable opportunity to correct decisions which it might not otherwise have had. The fact that tribunal members are aware that their decision may come under such scrutiny has also helped in ensuring that they get it right the first time.

Most other provincial Ombudsmen have the power to review the decisions or rulings of administrative tribunals. The Alberta Ombudsman argued that while the Ombudsman's primary role should be to review the process, the Ombudsman should reserve the right to look at the merits of the decision, if the decision itself appears to be out of sync. On the other hand, in the course of the recent review of the Quebec Public Protector's mandate, the Public Protector argued that it was inappropriate for him to investigate decisions of administrative tribunals, although he argued that he should continue to have jurisdiction over the administrative facet of tribunal activities.

One of the proposed amendments in Bill 80 was that tribunal decisions be excluded from review by the Ombudsman. In introducing the bill the Minister pointed to many of the same reasons presented by witnesses who appeared before us. The Ombudsman's lack of expertise and the fact that he or she reviews decisions without having had the opportunity to hear the evidence as presented, or to assess the credibility of witnesses, all make it inappropriate for the Ombudsman to review tribunal decisions. He also noted that other safeguards exist to review tribunal decisions, and observed that steps had been taken to provide more effective review mechanisms in the areas of workers' compensation and social assistance review. Former Ombudsman Dan Hill was critical of this aspect of Bill 80, arguing that this would mean many complainants would have no administrative remedy at all for their complaints against such tribunals.

We recognize that this is an important issue. While we appreciate the many concerns of administrative tribunals with respect to the Ombudsman's review of their decisions, we believe that past practice has shown that the Ombudsman can play a useful role in improving the quality of decisions. We have therefore attempted to identify ways in which the Ombudsman can continue to play a role in this area.

We believe that the present approach followed by the Ombudsman and WCAT provides a useful model on which the Ombudsman should review tribunal decisions. In our view, the primary role of the Ombudsman should be to review decisions with a view to recommending that a decision be reconsidered. However, we believe that the Ombudsman should also retain the power to make recommendations concerning the reasonableness of a tribunal's actual decision, in the event that the Ombudsman is not satisfied with the tribunal's response to a request that a decision be reconsidered.

There remain, however, several aspects of the review of tribunal decisions which do require attention. One of these, the inability of some tribunals to reconsider their decisions, we addressed earlier through our recommendation that

governmental organizations be authorized to reconsider their decisions where this has been recommended by the Ombudsman.

Another matter which has caused concern is the procedures followed by the Ombudsman in reviewing tribunal decisions. In his *Directions* report, Robert Macaulay recommended that the Committee make rules to govern how the Ombudsman is to conduct investigations, particularly those concerning decision-making agencies. Later in this report, we recommend that the Committee undertake a general review of the different areas in which there may be a need to make rules. We agree that one area which should be examined are the procedures which are followed by the Ombudsman in reviewing tribunal decisions.

We therefore recommend:

- 14. That the Committee consider, as part of its proposed review of the need for new rules, whether there is a need to formulate rules to govern how the Ombudsman conducts investigations of tribunal decisions.**

Cabinet Decisions

Section 13(b) of the Act states that it does not apply:

- (b) to deliberations and proceedings of the Executive Council or any committee thereof.

Both Ombudsman Maloney and Ombudsman Morand recommended that the word "decisions" be inserted in front of the word "deliberations" to make it clear that the Ombudsman is not empowered to investigate decisions of Cabinet. This, Ombudsman Maloney commented, would reflect the original intent of the Legislature.

Former Ombudsman Dr. Hill on the other hand took the position that he had the power to investigate cabinet decisions. In particular, he wanted to investigate

complaints concerning a particular Order in Council which directed a registrar to take possession and control of the assets of a company in which certain complainants were investors. When a ministry challenged his authority to do so, Dr. Hill brought an application to determine whether he in fact had jurisdiction in such matters. He argued that the Ombudsman should have the power to recommend that cabinet decisions be reconsidered, in the way he had the power to recommend that a law which formed the basis of an unreasonable decision could be reconsidered.

The Court concluded that the Act protected only the processes and deliberations of the Executive Council. Beyond that the Ombudsman did in fact have jurisdiction, and could inquire into the effect of Orders in Council on the administration at large and on the public affected.⁶²

In response to the position taken by Ombudsman Hill, an amendment was introduced in Bill 80 which would have removed cabinet decisions from the Ombudsman's jurisdiction. In introducing the amendment, the Minister responsible commented:

The amendments further clarify the jurisdiction of the Ombudsman with respect to cabinet decisions. The Act currently provides that the Ombudsman may not investigate deliberations and proceedings of the executive council. Different interpretations of this historically have existed. While the former Ombudsman had initially taken the view that this section precluded investigation of cabinet decisions, he has taken the contrary position in recent years. The bill will clarify that cabinet decisions are excluded from the Ombudsman's review.⁶³

In our hearings a number of witnesses agreed that it was inappropriate for the Ombudsman to investigate the decisions of cabinet. One argued that Cabinet members are accountable to the electorate through the political process for their

actions. Former Ombudsman Donald Morand reiterated his position that the Ombudsman should not have this power.

Ombudsmen in Alberta, Manitoba, Saskatchewan, Quebec and Nova Scotia do not investigate cabinet decisions. The Manitoba, Saskatchewan and Quebec legislation expressly provide that cabinet decisions are exempt. In his submission to the Committee, the Alberta Ombudsman also commented that he did not believe that the Ombudsman should examine Cabinet decisions, because Cabinet is a political entity.

We agree that the Ombudsman should not have the power to investigate the decisions of cabinet. Accountability for the wisdom of these decisions should come through the democratic process, since they are by their very essence political in nature. At the same time, we recognize that decisions of the Cabinet must go through a process of implementation. While we do not believe the Ombudsman should review the wisdom of the decision itself, we do believe it is appropriate for the Ombudsman to examine whether the decision is implemented fairly by public officials.

We therefore recommend:

- 15. That the Act be amended to provide that the Ombudsman does not have the jurisdiction to review Cabinet decisions.**

Expansion of Jurisdiction

The Ombudsman may investigate the acts or decisions of any governmental organization. As noted above, for the purposes of the Act a governmental organization includes Ministries, commissions, boards or other administrative units of the Government of Ontario. The question of whether a body is considered to be a governmental organization has generally depended on the provincial government's degree of control with respect to that body.⁶⁴

The difficulty with requiring governmental control as the test of jurisdiction is that it excludes many public agencies which, while not under government control, are nonetheless created by statute or supported by provincial funding. Such bodies include, for example, municipalities, public hospitals and school boards. The need for assistance by the average citizen in these contexts, it is argued, is as important as with institutions directly under the control of government. For this reason, the possibility of expanding the Ombudsman's jurisdiction to include agencies not covered by the Act has been raised on a number of occasions.

In his 1979 *Blueprint for the Office of the Ontario Ombudsman*, former Ombudsman Arthur Maloney argued that the Ombudsman should have jurisdiction over any body financed in whole or in substantial part with public funds, including municipalities, hospitals, school boards and universities.⁶⁵ Apart from the question of funding, he argued that the test should be "is the body established by statute and carrying out its function pursuant to a statute?"

In 1986, former Ombudsman Dan Hill presented a paper on jurisdiction to the Standing Committee on the Ombudsman arguing that the Ombudsman should have jurisdiction over any public agency which is created by statute, supported in some degree by provincial funding, or has some or all of its members appointed by the Lieutenant Governor in Council. However, in light of the office's capacity and his own identification of areas of priority, he argued that possible expansion at that time should be focused on three areas - public hospitals, children's aid societies, and the Ontario New Home Warranty Program.⁶⁶

In response to Dr. Hill's paper, our predecessor Committee conducted a review of these three areas of possible expansion in 1989.⁶⁷ It observed that expansion would require significant and costly numbers of additional staff. The Committee noted that complaints concerning these organizations often require immediate attention and expressed concern at the Ombudsman's ability to respond quickly enough to them. It was also concerned about the potential duplication of services provided by other agencies. While the Committee recognized that problems

existed in internal mechanisms available in these organizations for resolving complaints, it believed that improvements in these mechanisms, rather than the adoption of a new one such as the Ombudsman, might be a more appropriate response. Our predecessor Committee therefore concluded that the Ombudsman's jurisdiction should not be expanded.

In light of the comprehensive nature of this current review, we felt it was appropriate to seek input from the public again on the question of expansion of jurisdiction. As the primary basis for discussion, we used a list of areas of possible expansion the Ombudsman presented in her *1991-92 Annual Report*. We invited comment on: municipalities, municipally-administered General Welfare Assistance, school boards, children's aid societies, public hospitals, the Ontario New Home Warranty Program, and the Law Society of Upper Canada. In the course of our hearings, one witness also raised the need for the Ombudsman to play a role in reviewing complaints concerning the activities of the courts, particularly judges.

Many of the responses we received were from organizations active in the areas under consideration for expansion. Most of these witnesses argued that existing mechanisms adequately provided for the review of complaints from the public. They also raised concerns about the potential for duplication and about the cost involved in expansion. In this respect, one witness commented that since expansion into the areas of municipalities and school boards would require a significant increase in staff, it should only be pursued if a total and proper commitment could be made. Otherwise, he added, you raise expectations which cannot be met. More generally, former Ombudsman Donald Morand commented that in his view the Ombudsman had been given too much jurisdiction.

A number of witnesses, however, argued that there was a need for the Ombudsman's services in particular areas. One group argued, for example, that they see many complaints in the area of general welfare assistance about the demeaning way people are treated and the manner in which discretion is

exercised. Professor Rowat observed that there is a growing need in democracies for greater accountability and responsiveness to the public on the part of the judiciary. The Ombudsman, in his view, could play a useful role in this regard, as is demonstrated by the experience in Sweden where one of the main functions of the Ombudsman has been to monitor the administration of justice, including the work of judges.

We have carefully considered the submissions received and the concerns which have been raised in the past concerning the Ombudsman's jurisdiction. While we recognize the need for ombudsman-type services in a number of areas, we are concerned about expanding the Ombudsman's jurisdiction at this time. Before such an expansion should be further considered we believe greater efforts must be made at the local level, and through the organizations concerned, to improve the manner in which complaints are addressed. We would strongly encourage these organizations to examine their existing methods for dealing with concerns from the public, and to consider carefully ways in which they could themselves provide ombudsman-type services. We would also encourage them to increase efforts to make people aware of the lines of recourse available, and to ensure that access to them is as open as possible.

RELATIONSHIP BETWEEN THE OMBUDSMAN AND THE LEGISLATURE

Introduction

The remainder of the report focusses on the Ombudsman's relationship with the Legislature. Before particular aspects of that relationship are examined, we believe it is important to consider in a general way their respective functions and how they operate together. Since the Ombudsman's function derives from the Legislature's own role, it is necessary to first understand the latter.

The Legislature is the primary vehicle for ensuring government accountability:

Accountability is the essence of our democratic form of government. It is the liability assumed by all those who exercise authority to account for the manner in which they have fulfilled responsibilities entrusted to them, a liability ultimately to the Canadian people owed by Parliament, by the Government and, thus, every government department and agency.⁶⁸

It is in the Legislature that policies and programs are approved and accountability for their implementation must culminate. As the Royal Commission on Financial Management and Accountability (Lambert Commission) *Report* states:

In terms that we have already used, effective accountability demands that evaluation of all aspects of programs begin by Parliament requiring clear identification of tasks and goals and end by a full accounting to Parliament for results achieved.⁶⁹

The Legislature is therefore the place in which publicly-funded bodies must account for the fulfilment of their mandates.

The Legislature looks to the Ombudsman and its other Officers to assist it in ensuring that the government implements projects and policies entrusted to them in

a fair and effective manner. This view of the Ombudsman's role has been explained as follows:

It (the Ombudsman) thus becomes, like the legislative auditor, part of the machinery the legislature uses to monitor and supervise the administrative arm of government. Like the auditor of financial transactions, the ombudsman is an auditor of administrative transactions.⁷⁰

The Ombudsman and the other Officers of the Legislature therefore form crucial components of the Legislature's accountability mechanisms.

The fundamental notion of the Ombudsman's independence flows out of this relationship. Because the Ombudsman's function is to investigate the actions of government, it must be free from any government influence or control. On the other hand, like all publicly-funded agencies the Ombudsman must be accountable for the manner in which it performs its functions. To ensure that both these objects are achieved, the Ombudsman was created as an Officer of the Legislature. This means that the Ombudsman is independent of government but accountable to the Legislature.

The Ombudsman therefore relates to the Legislature both as an Officer and as a publicly-funded body. Such a dual relationship creates a different dynamic between the Legislature and its Officers, than exists between the Legislature and other publicly-funded bodies. On the one hand, the Legislature has a special interest in facilitating the Ombudsman's work. This may involve using the authority of the Legislature to bring pressure to bear on the government to consider and implement the Ombudsman's recommendations. It involves, as well, ensuring that the Ombudsman has effective powers and adequate resources to fulfil his or her functions.

At the same time, the Legislature has an interest in the Ombudsman's performance of his or her functions. This can involve it in evaluating and ensuring that the

objectives set for the Ombudsman are met, as well as examining concerns about the services provided and the Ombudsman's use of resources. As the Legislature attempts to ensure that the Ombudsman is effectively fulfilling his or her functions, concerns about the Ombudsman's independence again arise.

Two different notions of independence must be considered. The first, which we referred to above, is the Ombudsman's freedom from government influence in decision-making. Although the Legislature is not the government, any involvement by it in the Ombudsman's investigation of complaints might be perceived as a threat to the Ombudsman's independence in this sense. The significance of this area of independence was highlighted by the Speaker in his appearance before the Committee. He argued that in settling upon the proper relation between the Ombudsman and the Legislature the public must be assured:

. . . that there is no intention here for interference with the independence to make decisions. . .
Otherwise the public loses faith in having a neutral body to which a person can go with a complaint about government.⁷¹

The second notion of independence concerns the Ombudsman's ability to make decisions and to operate his or her office within the scope of the powers assigned to it. At issue here, in our view, is not so much a concern about independence from government influence but rather the efficacy of the Legislature involving itself too closely in the affairs of its agent. This can bring into question the whole rationale for delegating to the Ombudsman the responsibility for investigating government actions. What the Legislature must guard against in this respect is involving itself to the point where it begins to perform the Ombudsman's functions, by either dictating how a particular investigation should be conducted or how the office should be managed on a day-to-day basis.

Within all of this, it must always be remembered that the Ombudsman and the Legislature share a common purpose: to provide the Ontario public with the most

effective Ombudsman services possible. With this fundamental objective in view, we believe that we can design ways to strengthen our partnership.

To do so, we believe it is important to examine in some detail the specific elements of the formal relationship between the Legislature and the Ombudsman. We have organized our analysis into three broad areas:

- The Mandate and Funding of the Ombudsman — this covers how the mandate of the Office is determined, the appointment process, the term of office and the manner in which the Ombudsman is funded;
- Direction and Control of the Ombudsman's Office — this covers matters related to the implementation of the mandate entrusted to the Ombudsman; at issue here is the extent of the Legislature's involvement in the Ombudsman's decision-making and management of the office; and
- Monitoring the Office of the Ombudsman's Achievement of Its Objectives — this covers matters related to the Legislature's determination of how effectively the Ombudsman is fulfilling the objectives of the Act.⁷²

Each of these stages of the relationship between the Ombudsman and the Legislature is examined in turn.

The Mandate and Funding of the Ombudsman

This is the initial stage at which the Office itself is created and the Ombudsman receives his or her mandate. Decisions at this stage concern setting the objectives for the Office, how the Office will be funded, and the Ombudsman's appointment process and term of office. The decisions on funding and appointment are particularly critical since government involvement in these processes can directly affect how the Ombudsman performs his or her functions.

In this section we examine the responsibility for the legislative framework, appointment, term of office and funding arrangements for the Office of the Ombudsman.

The Legislative Framework

It is clear that the responsibility for the *Ombudsman Act* itself lies with the Legislature. It is the Legislature that has the responsibility to pass and amend legislation.

The Legislature's ongoing role with respect to the *Ombudsman Act* is facilitated by the work of the Standing Committee on the Ombudsman. Through the Committee the Ombudsman has the opportunity to raise concerns with the legislative framework, which the Committee can then bring to the Legislature's attention through its own reports. At the same time, the Committee, through its review of the Ombudsman's annual reports, and cases referred to it by the Ombudsman, itself identifies areas for change or review, and has on a number of occasions recommended to the Legislature that provisions of the *Ombudsman Act* be reviewed.

The Ombudsman's role, in contrast, is one of advising the Legislature of the need for amendments and of cooperating with the Legislature in any reviews of the Act. Quite clearly the Ombudsman's participation in a review is critical. An Ombudsman's failure to present his or her views for improvement or to cooperate in providing the information a Committee needs can considerably undermine the Legislature's fulfilment of its responsibilities on behalf of the public.

We believe that the respective roles of the Committee and the Ombudsman with respect to the legislative aspects of the Ombudsman's work should be set out more clearly in the Act and the Standing Orders of the Legislative Assembly. At present, the Committee's standing orders refer only to the review of the Ombudsman's reports and the making of rules for the guidance of the Ombudsman. While these responsibilities necessarily involve our Committee in reviewing a range of matters related to the work of the Ombudsman, the generality of our mandate has over the course of time led to some confusion over the respective responsibilities of the Committee and the Ombudsman.

Accordingly, we believe that the Committee's terms of reference should expressly address our responsibility with respect to monitoring and reporting the need for amendments to the *Ombudsman Act*.

We therefore recommend:

- 16. That the Standing Orders of the Legislative Assembly be amended to provide that the Committee shall monitor and review the Ombudsman's exercise of his or her functions and report any changes to the *Ombudsman Act* that the Committee considers desirable.**

As we have indicated above, we believe that the Ombudsman has a responsibility to cooperate with the Legislature in its performance of its legislative role. While we are confident that the Committee's existing mandate gives it the power to direct the Ombudsman's participation, we believe that a provision in the Act which spoke directly to the Ombudsman's responsibilities in this regard could help clarify matters. In this respect, we note that the *Audit Act* defines quite clearly the Provincial Auditor's responsibility to attend meetings of the Public Accounts Committee in order to assist it in the fulfilment of its mandate.⁷³ We believe there should be a similar provision in the *Ombudsman Act*.

We therefore recommend:

- 17. That the *Ombudsman Act* be amended to provide that the Ombudsman shall, at the request of the Standing Committee on the Ombudsman, attend at the meetings of the Committee to assist it in the fulfilment of its mandate.**

To fully prevent problems arising with respect to the Ombudsman's interpretation of his or her responsibility to attend before the Committee, the Committee's mandate must also be clarified. This requires that the Committee's mandate, as set out in the Standing Orders, be consistent with the provisions of the *Ombudsman Act*. At the end of this section of the report we have proposed new

terms of reference for the Committee. We believe that these should be included in the Act.

We therefore recommend:

- 18. That the proposed terms of reference of the Standing Committee on the Ombudsman, as set out in Recommendation 44 of this report, be included in the *Ombudsman Act*.**

In the past, the Ministry of the Attorney General has been responsible for developing and bringing forward amendments to the *Ombudsman Act*. We are concerned with the fact that the Ombudsman must rely on a Minister of the government to bring forward amendments. This is inappropriate given the Ombudsman's role in reviewing the actions of government, and the fact that the Ombudsman is an Officer of the Legislature. Our concerns in this respect are increased by the lack of attention given to the Ombudsman's requests for legislative amendments in the past.

We have looked for ways to improve this situation. We note that in Alberta this problem has been addressed by giving the Standing Committee on Legislative Offices greater involvement in the introduction of amendments to the *Ombudsman Act*.⁷⁴ Another proposal that has been put forward would be for the Speaker to act as the equivalent of Minister for the Ombudsman, and to pilot all legislation relating to the Ombudsman through the Legislature.⁷⁵

We believe the problems we have noted could be addressed by assigning responsibility for the *Ombudsman Act* directly to this Committee. This would ensure that the Ombudsman's concerns are addressed without any question of government influence, and that these matters are examined in a more timely manner.

In light of the fact that the *Ombudsman Act* is a public bill, we believe that the procedures which generally govern the consideration of government bills should apply.

We therefore recommend:

19. **That responsibility for developing and introducing amendments to the *Ombudsman Act* be assigned to the Standing Committee on the Ombudsman; and**

That the procedures which govern the consideration of government bills apply to amendments introduced by the Committee.

Appointment Process

The Ombudsman is presently appointed by the Lieutenant Governor in Council on the address of the Assembly. In practice, this means that the government of the day selects a candidate and proposes their appointment in the House.

Traditionally, the government's selection has been discussed with the two opposition leaders to ensure that the appointment is acceptable to all parties.

A number of witnesses made suggestions on how the appointment process could be improved. One was that the Standing Committee on the Ombudsman become more involved in the appointment process: the Committee could establish a search Committee to identify candidates, and then make recommendations to the Assembly on who should be appointed. Several witnesses argued that the process should be more open and competitive to ensure that the person who is appointed has the skills necessary for the job.

A number of jurisdictions already involve a Committee in the appointment process. In Alberta, the Select Standing Committee on Legislative Offices selects a candidate, which it then puts forward to the Legislative Assembly for ratification. Similarly, the Manitoba Standing Committee on Privileges and Elections considers applications and recommends an appointment, which is then

made by the Lieutenant Governor in Council. In British Columbia, a special committee, acting unanimously, nominates a person to be appointed, who is then recommended by the Assembly for appointment to be made by the Lieutenant Governor in Council. In Quebec, a committee is not involved in the Public Protector's appointment, but the appointment must receive the support of two-thirds of the members of the National Assembly.

In New South Wales, Australia, the Ombudsman has pushed for the use of Committees in the appointment of the Ombudsman,⁷⁶ and legislation has been passed which gives the Joint Committee on the Office of the Ombudsman the power to veto any proposed appointment.⁷⁷ At the federal level in Australia, the Senate Standing Committee on Finance and Public Administration recommended that a panel of the Chairs and Deputy Chairs of the finance and public administration committees of the Senate and the House be formed to advise the government on nominations to the post of Commonwealth Ombudsman.⁷⁸ It has been recommended in New Zealand that the Officers of Parliament Select Committee be given the responsibility of making recommendations concerning the appointment of the Ombudsman.⁷⁹

While in this province the Ombudsman's appointment does not involve a committee, the appointment of another officer of the Legislature does. The *Audit Act* provides that the Provincial Auditor's appointment shall be made in consultation with the Chair of the Public Accounts Committee.⁸⁰ In practice, the Committee interviews applicants and then makes a recommendation to the Assembly for appointment. We note as well that the Standing Committee on the Legislative Assembly has recommended that the Standing Committee on the Ombudsman be given the power to review and approve proposed nominees to the Office of the Ombudsman.⁸¹

We believe that the Standing Committee on the Ombudsman should be involved in the selection of the Ombudsman. Such a process is preferable to the present

approach in which the government merely consults informally with the opposition leaders for the following reasons:

- the selection of the Ombudsman by the government could give rise to the perception that the Ombudsman is in some way tied to government;
- the involvement of an all-party committee would ensure the confidence of all members of the Assembly in the Ombudsman they are appointing; and
- the involvement of all three parties in the Ombudsman's selection could dispel questions of political patronage as the basis of appointment.

We believe as well that the Committee's involvement would address the concerns of those who believe the appointment process should be more open and competitive. This would come from the Committee's involvement in identifying and interviewing potential candidates. However, as is the case with the Provincial Auditor, we would look to these interviews being conducted *in camera*, with one candidate being recommended to the Assembly for approval. The ultimate resolution of the Assembly moving the Ombudsman's appointment would be debated publicly.

We therefore recommend:

- 20. That s. 3 of the *Ombudsman Act* be amended to provide that the Ombudsman shall be appointed by the Lieutenant Governor in Council on the address of the Assembly only after a unanimous recommendation of the Standing Committee on the Ombudsman.**

Term of Office

The Ombudsman's present term of office is ten years, with the possibility of reappointment for a further term or terms. The Ombudsman is also required to retire at age 65, unless he or she has not yet served five years, in which case the Ombudsman shall retire after having served for five years. The Act also provides that the Ombudsman may be removed at any time for cause.

Several submissions in the Committee's hearings addressed this issue. Former Ombudsman Donald Morand stated that this was an appropriate term of office, - arguing that five years would not be enough and that a lifetime tenure would be too much. Another witness, while not specifying a term of office, commented that the Ombudsman's term should not be tied to an election or to the length of a particular government because that would link the appointment to government and seriously erode independence. Other witnesses felt that ten years was an awfully long time. One believed that a five year term with the possibility of reappointment for a further term would be reasonable.

In considering this issue, we have examined the terms of office of other jurisdictions. Of the seven other provinces which have Ombudsmen, six of them have a term of office of either five or six years. Only one other province, New Brunswick, has a term of ten years. It also appears that most Ombudsmen in other countries are appointed for a shorter term. A recent study which examined 48 different Ombudsmen concluded that the majority had terms of five to six years.⁸²

The Committee also notes that in Ontario the Information and Privacy Commissioner, the Conflict of Interest Commissioner and the Chair of the Commission on Election Finances each are appointed for five year terms. The Provincial Auditor, on the other hand, is appointed until age 65, and the Chief Election Officer is appointed for an unspecified term. At the federal level, offices comparable to the Ombudsman in the services they provide, such as the Commissioner of Official Languages and the Information and Privacy Commissioners, are appointed for seven years.

The choice of a term of office must satisfy a number of concerns. As mentioned above, a term which is shorter than the term of government potentially exposes the Ombudsman to pressures, or at least perceptions, which could affect the independence of his or her office. The term must also be of sufficient length to ensure that high quality people can be recruited, and to ensure that the individual

selected has a sufficient period of time to learn the responsibilities and contribute effectively.⁸³

At the same time, too lengthy a term can insulate an appointee from accountability for his or her performance, short of removal for cause. There are also benefits that come from a change in leadership after a certain period. We note as well that in terms of independence the reduced term would be balanced by the removal of the government from the reappointment process, which we have recommended above.

Weighing these considerations, we have concluded that an appropriate term of office for the Ombudsman would be six years. This term is longer than the term of government and long enough to ensure the recruitment of high quality professionals. We are reassured in this respect by the fact that most comparable officials, in Canada and elsewhere, are appointed for terms which are similar in length.

We therefore recommend:

21. That s. 4(1) of the Ombudsman Act be amended to provide for a term of office of six years.

It is not our intention, through this amendment, to alter the present Ombudsman's term of office. The amendment should apply to future appointments and reappointments only.

We have also examined the requirement in s. 4(2) of the Act which provides that the Ombudsman must retire upon attaining the age of sixty-five years. We believe that an Ombudsman who is prepared to continue to serve beyond this age should be given that opportunity.

We therefore recommend:

22. That s. 4(2) of the *Ombudsman Act* be removed.

Funding

How can an Ombudsman be funded, and have his or her spending of public funds effectively reviewed, without raising concerns about government attempts to influence the Ombudsman's actions? This fundamental question goes to the heart of both an Ombudsman's ability to perform his or her functions, and to the Legislature's responsibility to ensure that public funds are spent wisely.

The existing process for funding the Ombudsman attempts to address these problems. Government departments submit their estimates to Treasury Board which alters and approves them, and then submits them to the Assembly, which then refers them to the Estimates Committee for approval. In contrast, the Ombudsman and other officers of the Legislature present their estimates, not to the government's Treasury Board, but to the Assembly's Board of Internal Economy, whose responsibility it is to review and approve those estimates and then to lay them before the Assembly. These estimates, like government estimates, are then referred to the Estimates Committee for further review.

Role of the Board of Internal Economy

This approach is intended to eliminate concerns about government pressure on the Ombudsman through control of funding. However, the appropriateness of the Board of Internal Economy (the "Board") reviewing the estimates of the Ombudsman has itself been questioned because of its composition. The Board consists of the Speaker, three members of the Executive Council and one member from the caucus of each party. This membership, it is argued, is too heavily weighted toward the government, so that even though the Board is a body of the

Legislature, it could indirectly be controlled by the government. In commenting on this possibility, the first Ombudsman, Arthur Maloney, stated as follows:

In the past this procedure has functioned satisfactorily but the principle and the appearance of this mechanism of approval to my mind leaves much to be desired. As I have stated and restated, in terms of the Ombudsman's office one principle is paramount; the Ombudsman's office must be free of any possibility of pressure, political, executive or administrative, and seen to be so. The Legislature should be at pains to ensure that there is no suggestion that the Government is in a position to control the Ombudsman's budget, and therefore hobble the office in its efforts to carry out the mandate assigned to it. This is precisely the reason why the Board of Internal Economy which numbers among its members three Ministers of the Crown is an inappropriate body to review the Ombudsman's estimates and its function in this regard should be discontinued.⁸⁴

The presence of three Ministers on the Board is particularly troubling since their responsibilities as part of the executive branch of government could bring them into direct conflict with the Ombudsman who is responsible for investigating their ministries. We note that Ministers are prohibited from being members of the New South Wales Committee on the Ombudsman⁸⁵ and the New Zealand Officers of Parliament Select Committee.⁸⁶

Despite these problems in the composition of the Board, the present Ombudsman and former Ombudsman Donald Morand have both commented that they are satisfied with the manner in which the Board reviews the Ombudsman's estimates. This, in part, would appear to be because of the Board's awareness of its potential conflict. The Speaker, in his appearance before the Committee, commented in this respect:

Traditionally, what happens is that the person responsible for the estimate . . . comes and makes

his presentation, and the board members will ask questions. The presenters will then absent themselves from the room and the board then will either pass the estimate, amend it, or send it back completely, whatever its wish is.

. . . But it was stressed at the board that the board recognized that the officers of the House are independent of government. They are at arm's length from government. Therefore, what the board is doing would be to make requests with respect to budgets, because there is the fairly obvious danger, because the board ultimately controls the budget, of the board directing the activities of the officers of the House.⁸⁷

In practice then, the government dominance of the Board does not appear to interfere with the independence with which the Ombudsman's budget is approved. However, we believe this non-interference is achieved at some cost. Because of the Board's composition, and the potential for any detailed review of the estimates being seen as an attempt to direct the Ombudsman's activities, it is in a difficult position with respect to effectively analyzing and requiring Officers of the Legislature to justify their proposed expenditures. In addition to the Speaker's comments above, which suggest a reluctance on the part of the Board to be too searching in their questions, Professor Graham White, a former committee clerk of the Assembly, has commented on the limited nature of the Board's review:

Except for the Office of the Assembly, the board's scrutiny of the budgets submitted to it is perfunctory; the board is not usually provided with any independent analysis of the financial submissions to it and is not inclined to inquire closely into the details and rationale for budgetary estimates in the way, for example, that Management Board reviews Ministry budgets.⁸⁸

While we are satisfied that the Board's review is conducted in a manner which respects the need for the Ombudsman to be funded and operated at arm's length from government influence, we are concerned that this hampers the second

important element of the budgetary review — the Legislature's responsibility to ensure that public funds are spent wisely.

We believe, however, that it is unnecessary to look only to the Board for the Ombudsman's fiscal accountability. There remains the second component of budgetary scrutiny by the Legislature — assessment by a committee of the Assembly.

Assembly's Review of the Estimates

As noted above, after the Board's approval, the Ombudsman's estimates are laid before the Assembly which refers them to the Estimates Committee for review. This step is required because it is the Assembly which must ultimately vote on all expenditures. To advise it in this responsibility the Assembly looks to the Estimates Committee.

The Estimates Committee is responsible for examining the estimates not only of all offices of the Legislature, but for all of the Ministries as well.⁸⁹ However, it does not examine the estimates of each in detail each year, but instead is required to select not fewer than six and not more than 12 ministries and officers. The estimates not selected are deemed to be approved without examination. Those selected must provide such information as growth rates, interim expenditures for the previous fiscal year, and an explanation of the programmes and funding by particular item.

Three areas of concern have been raised with respect to this process: the effectiveness of the estimates review, the selective nature of the estimates considered, and the fact that the Estimates Committee reviews the estimates of both the government and Officers of the Legislature.

The question of whether the estimates review is effective, in the sense of whether it has any impact on the estimates presented, is often raised. Rarely are estimates

amended in Committee before being referred back to the House. On the other hand, changes in a current year's estimates are not the only measure of the effectiveness of the process. For example, the mere requirement that a government department or officer must be prepared to publicly justify their proposed expenditures brings a measure of accountability. As Professor White has commented:

The real value of estimates lies in the preparation that ministers and civil servants must make for them: no one is certain what the opposition will ask, and the government must be prepared to explain and justify its policies at length in a very public forum before its principal political enemies. As is generally the case with parliamentary accountability, the estimates debates themselves are normally far less effective in fostering accountability than the fear engendered in government by their mere existence.⁹⁰

While the same political dynamics are not present with the Ombudsman and other Officers of the Legislature, the fact that the Ombudsman must be prepared to justify his or her proposed expenditures in a public forum can encourage a similar level of accountability.

Information received in the course of reviewing one set of estimates can also be incorporated into the preparation of future estimates and in the assessment later on of the effectiveness of programs now being undertaken. This point is made in the *Lambert Commission Report*:

It is not realistic to expect standing committees of the House to make major changes in departmental and agency Estimates for the fiscal year under consideration. However, it should be possible for them to exercise strong influence over a longer term, especially in cases where it can be demonstrated that value is not being obtained for the expenditure of public funds.⁹¹

For these reasons, we do believe that the estimates review process can potentially play some role in ensuring a measure of legislative scrutiny of the spending plans of the Ombudsman.

A further broad area of concern relates to the fact that only certain estimates are selected for review each year. Our particular concern is that since the creation of the Estimates Committee in 1989, the Ombudsman's estimates have not been selected for review. This is not surprising in light of the workload assigned to the Committee. Nonetheless, in combination with the limited review conducted by the Board, this has meant that legislative scrutiny of the spending activities of the Office of the Ombudsman over this period has not been adequate.

A final area of concern relates to the fact that the Estimates Committee reviews the estimates of both the government and Officers of the Legislature. In our hearings, Professor Donald Rowat argued that the estimates of the Ombudsman's office should be reviewed separately from government estimates, by a Committee which reviews only the agencies of the Legislature. He and other witnesses argued that this would place that Committee in a better position to compare the operations of those offices.

The Committee has considered ways in which to address these problems. One possibility, which this Committee recommended in its *Nineteenth Report (1991)*, would be to return responsibility for the review of the estimates to the Standing Committee on the Ombudsman. The Committee performed this responsibility from 1983-1989 prior to the consolidation of all estimates in the Estimates Committee. Former Ombudsman Arthur Maloney, in his *Blueprint for the Office of the Ombudsman*, stated that the Committee should have this responsibility:

. . . the Select Committee on the Ombudsman would appear to be an ideal vehicle for canvassing the office's needs and pursuing its estimates. Not only is the Select Committee the body with the most knowledge, experience and insight into the operation

of the Ombudsman's office but such a procedure would more readily reflect the situation of the Ombudsman as the agent of the Legislature.⁹²

This approach would ensure that the Ombudsman's estimates were regularly considered. It would also address the need to have the Ombudsman's estimates reviewed in a manner visibly separate from government.

A second possibility would be for the Ombudsman's estimates to be examined along with the estimates of other Officers of the Legislature, perhaps by a Committee struck, in part, to serve this purpose. While there might be some value in having the Estimates of all of the Officers considered in this way, we feel it is beyond our mandate to make such recommendations. We would note, however, that while there might be benefits to a common process, we believe that the Standing Committee on the Ombudsman is particularly well-situated to review the Ombudsman's estimates, and see considerable benefit to the Committee performing this function in the manner in which it did previously.

We believe that the estimates review process can provide a measure of accountability. Important elements of this process are the public nature of the review and the requirement that briefing materials be prepared and presented. These elements are particularly important where the estimates review is relied on to form a complement to the Board's review, which is held *in camera*.

We therefore recommend:

- 23. That the estimates of the Ombudsman no longer be referred to the Estimates Committee but that in the future those estimates be referred to the Standing Committee on the Ombudsman; and**

That the process followed for the review of other estimates under the Standing Orders apply, and in particular that the Committee's proceedings be held in public and briefing material be provided as required by the Standing Orders.

Relationship Between the Board and the Assembly

In light of the concerns raised earlier about the Board's role in reviewing the Ombudsman's budget, a further question which must be considered is whether the Ombudsman should present his or her estimates directly to the Standing Committee on the Ombudsman, in which case the Board's role in the budget approval process would be eliminated. This was recommended by Mr. Maloney in his *Blueprint*. In response to earlier recommendations of one of our predecessor Committees he commented:

Indeed, I go further than the Select Committee in that the Committee's recommendation envisages receiving and considering the estimates of the Ombudsman as they become available from the Board of Internal Economy and thereafter reporting upon them as the Committee considers appropriate to the Legislature. In my view, the review by the Board of Internal Economy should be eliminated. The Select Committee will therefore replace the Board of Internal Economy for the purpose of providing a preliminary review of the estimates before they are tabled in the Assembly and the amount Select Committee determines to be supported would then appear in the printed Estimates. The Legislature would therefore vote on figures truly scrutinized by their own representatives and without any overtones of Cabinet or Government control.⁹³

This type of approach has in fact been adopted in other jurisdictions, with the variation that the Committee involved has been one with responsibility for all legislative offices. In New Zealand, the Ombudsman's budget is presented for approval directly to the Officers of Parliament Select Committee. After discussion with the Ombudsman, the Committee reports its conclusions to the House of Representatives which commends the required Vote Estimate to the Governor General and requests that it be included in the appropriation bill.⁹⁴ The New Zealand Ombudsman is quite pleased with the way this process works.⁹⁵ Similarly, in Alberta, the Ombudsman's budget is submitted to the Select Standing

Committee on Legislative Offices which is required to review the estimates and then transmit them to the Provincial Treasurer for presentation to the Assembly.⁹⁶ In both Saskatchewan and Quebec similar approaches have been recommended.⁹⁷

We believe that New Zealand and Alberta offer useful models for the consideration of the Ombudsman's estimates. Referral of the Ombudsman's estimates directly to a legislative committee, in our case, the Standing Committee on the Ombudsman, would eliminate the government overtones associated with the Board's current review. Although in practice this does not seem to present a problem, in the longer term we believe the possibility for conflict between the Ombudsman and the Board must be considered. We note as well that this approach would allow the Ombudsman to answer for his or her estimates before only one body.

We therefore believe that the Ombudsman's estimates should be presented solely and directly to the Standing Committee on the Ombudsman.

We therefore recommend:

- 24. That the *Ombudsman Act* be amended to provide that the Ombudsman shall present his or her estimates directly to the Standing Committee on the Ombudsman; and**

That the Act be amended to provide that the Committee shall review and, as it considers proper, alter the estimates presented by the Ombudsman and cause the estimates as altered to be laid before the Assembly.

If this recommendation is adopted then Recommendation 23 will become unnecessary.

Direction and Control of the Ombudsman's Office

Consideration of the Legislature's role in the ongoing operations of the Ombudsman raises a number of questions. What, if any, role should the Legislature play in decisions concerning the management of the office, the design of procedures for processing and investigating complaints, and the actual investigation of complaints and reporting of conclusions by the Ombudsman? Too much Legislative control calls into question the whole rationale for the existence of a semi-autonomous body such as the Ombudsman. At the same time, the Legislature has a responsibility to monitor the broad directions taken by the Ombudsman in order to see that his or her mandate is not exceeded or varied, and that the plans and policies being developed or implemented are consistent with the public interest.⁹⁸

We propose to examine the relationship between the Legislature and the Ombudsman in these matters by examining the Legislature's role in the operation and management of the Office, the investigative and reporting procedures adopted, and the investigation and disposition of particular complaints.

Operation and Management of the Office

As with any office or agency, the Ombudsman must set up administrative and investigative structures through which its services will be provided. This includes staffing, purchasing equipment, locating offices and providing outreach services. It also involves designing an intake system for complaints, a process to refer and investigate complaints, and a system to review and make decisions on specific cases.

These matters are critical to the effectiveness with which the Ombudsman is able to achieve the objectives set by the Act. If its operations are designed poorly, service will suffer or a poor use of scarce public resources will occur. Similarly, if enough attention is not paid to making services accessible then a significant part

of the public may be unable to adequately make use of the Ombudsman's services. If problems arise in staffing, in terms of turnover or morale, then the overall effectiveness and quality of service can suffer significantly.

Nature of the Legislature's Role

What is the best relationship between the Ombudsman and the Legislature with respect to decisions of this nature? The Ombudsman has traditionally reported on developments in the organization and operation of his or her office in the annual reports, and the Legislature, through the Standing Committee on the Ombudsman, has inquired into the nature of these changes. Another way in which the Ombudsman's management has been examined is through the audits which have been periodically conducted. In addition to responding directly to the Auditor, Ombudsmen have discussed the results of these audits with legislative committees.

Perhaps the area which has caused the greatest difficulty between the Ombudsman and the Legislature concerns the latter's role when it receives communications from the public or a Member of the Assembly concerning an aspect of the Ombudsman's management. These have included, for example, complaints about the political activities of one of the Ombudsman's staff, problems with turnover of staff and employee relations, and the tone of an advertising campaign. While in some of these instances the Ombudsman has discussed the matter with the Committee, inquiries into these matters have sometimes been seen by Ombudsmen as an intrusion into their internal operations.

We do not see any value in reviewing in detail the circumstances surrounding these particular issues, since our concern is to delineate the appropriate lines of inquiry by the Legislature and to identify a general approach which can help the Legislature and the Ombudsman develop a clear, effective working relationship in relation to management of the Office.

A number of witnesses commented on these issues in the Committee hearings. Most drew a distinction between the types of complaints the Legislature should examine. On the one hand, former Ombudsman Donald Morand commented that the Standing Committee should not examine how the Ombudsman does his or her job from day-to-day, but should only examine complaints which raise serious questions about the Ombudsman's ability to do his or her job. A similar approach was suggested by former Committee Counsel, John Bell:

Where the public communicates with this Committee and where the substance of those communications raises issues that go fundamentally to the Ombudsman's ability to effectively carry out his or her functions under the Act, that's something I would . . . recommend very strongly that (the Committee) inquire into. Where the substance of the concerns . . . (are) more matters of administration within the office, former or current, — then I think out of courtesy I would in some way draw them to the attention of the Ombudsman and leave it to the Ombudsman to address those matters as she might be advised.⁹⁹

Another witness, while cautioning the Committee about getting involved at all in managing the Office, commented that the Committee should be sensitive if a large number of concerns were expressed.

We have considered this issue carefully. On the one hand, we agree that the Ombudsman should have a degree of operational independence. On the other hand, however, we believe that the Legislature has an interest in the general direction of the Office and the effectiveness with which the objectives established by the Act are implemented. Decisions and developments which fundamentally affect the manner in which the Ombudsman's services are provided are matters in which the Legislature has a legitimate interest. In the extreme case, this is suggested by the Legislature's power to remove the Ombudsman at any time for cause.¹⁰⁰

We believe that in sorting out the appropriate level of involvement by the Legislature some important distinctions must be made. First of all, a distinction must be drawn between particular decisions and those of a more general nature. For example, decisions to retain a particular consultant or to hire or fire a particular individual are not management decisions into which the Legislature should inquire. On the other hand, decisions concerning policies to ensure the political impartiality of staff or to provide french language services, as well as developments with respect to staff turnover or the closure of offices which might impact in a fundamental way on the services provided and the reputation of the Office, are matters into which the Legislature may legitimately inquire.

This last point also raises the second distinction which must be made, which concerns the extent of the Legislature's involvement. This is the distinction between answerability and control.¹⁰¹ Answerability requires that the Ombudsman respond to criticism and explain his or her actions. Control implies power to direct the Ombudsman on how a situation ought to be addressed, or on what policies should be adopted. In our view, the Legislature's role with respect to decisions and developments of the nature described above is primarily one of requiring answerability on the Ombudsman's part. This means, for example, that the Legislature would not, if it inquired into these matters, have the power to change the Ombudsman's decision if it was unsatisfied with his or her approach. Only in instances where the issue was of such fundamental concern, or the actions of the Ombudsman so serious as to raise questions as to his or her ability to perform their responsibilities, would the ultimate exercise of control through removal from office be considered or appropriate.

Some might question whether even answerability on the Ombudsman's part is appropriate. It might be argued that even the requirement to answer questions about management decisions brings into question the extent to which the Ombudsman is operationally independent.¹⁰² We believe, however, that matters which might impact in a fundamental way on the manner in which services are provided are areas of legitimate legislative inquiry.

In this respect, we think it is important to recognize a third distinction, that between independence over decisions related to the investigation of complaints, and decisions related to the administration or management of the Office. The requirement of autonomy, in our view, applies with greater force in the first respect.¹⁰³ As we discuss later in this chapter, we believe the Legislature must be particularly cautious not to raise questions about the Ombudsman's independence to investigate complaints. While we also recognize that inappropriate control of the management of the office can raise, indirectly, similar concerns, we believe that a greater scope of inquiry in this area is necessary to ensure adequate accountability.

We believe therefore that the Legislature should be able to inquire into decisions or actions of the Ombudsman which concern the management of the office and which in the Committee's view might impact in a fundamental way on the manner in which services are provided.

We therefore recommend:

- 25. That the Standing Orders of the Legislative Assembly be amended to provide that the Committee shall monitor and review the Ombudsman's exercise of his or her functions, which shall include inquiring into and reporting on any matters which the Committee believes should be brought to the attention of the Assembly.**

Methods of Communication

In addition to clarifying the legitimate lines of inquiry, we believe it is important to examine the methods of communication between the Ombudsman and the Legislature, since in our view many problems could be avoided through improved methods of communication.

In our hearings several witnesses addressed the manner in which problems should be addressed. Professor Graham White commented:

One of the corollaries of my view of open communications and mutual respect being required for the process is that there should be regular, informal meetings, perhaps between the Ombudsman and representatives of the Committee . . . just to talk over problem situations and keep the lines of communication open. Similarly, the Ombudsman . . . should always be prepared to come before this committee to discuss issues of concern to this committee.¹⁰⁴

Former Ombudsman Morand also commented that if the Committee were to examine a complaint, then it should be done *in camera* because of the importance of the Office of the Ombudsman.

We agree that greater use should be made of both informal and *in camera* meetings, since these can provide an opportunity for explanation without the formality of a full committee meeting held in public. Another possibility would be for the Ombudsman to provide to the Legislature an annual "ombudsplan." This would involve the Ombudsman, at the time the budget is considered, indicating initiatives planned for the year with respect to the organization and operation of his or her office. Through discussion with the Ombudsman, the Committee would know in advance some of the developments it could expect and would have the opportunity to provide some feedback to the Ombudsman. This approach has been adopted in New Zealand¹⁰⁵ and seems a very effective way to both improve communication and avoid potential problems down the road.

This would be an improvement on the present approach in which the Ombudsman provides some general indication in each annual report of his or her objectives for the coming year. Unfortunately, however, the report is not usually received until a few months into the fiscal year, and then cannot usually be examined until the summer recess several months later. The proposed ombudsplan approach would allow for discussion and Committee input prior to the activities being undertaken.

We therefore recommend:

- 26. That the Standing Orders of the Legislative Assembly be amended to provide that the Committee shall discuss with the Ombudsman his or her annual ombudsplan which shall set out major projects for the forthcoming year.**

In combination with the transfer of the estimates to the Committee, these recommendations will make clear the range of information which the Committee may request. We believe such clarification is a critical element in establishing an effective working relationship between the Ombudsman and the Legislature. In this respect, it is of interest that for the period the Standing Committee had responsibility for the estimates — 1983-1989 — there appears to have been a very good relationship between the Ombudsman and the Committee, with no conflicts of significance. This could simply have been a coincidence of events or the approach of former Ombudsman Dr. Hill who served from 1984-1989, but it may also relate to the fact that responsibility for the estimates made it clear that the Committee was entitled to enquire into certain matters which had raised problems in the past.

We believe clarification of the lines of legitimate inquiry by the Committee in the way suggested could have a similar effect. More importantly, we believe it would reflect the fact, as the Committee stated in its *Second Report* (1977), that the essence of the relationship between the Assembly and the Ombudsman should be one of good faith, mutual respect, and co-operation, with open and free discussion between the Committee and the Ombudsman.¹⁰⁶

Rules for the Guidance of the Ombudsman

The *Ombudsman Act* provides that the Assembly may make general rules for the guidance of the Ombudsman in the exercise of his or her functions.¹⁰⁷ Subject to this power and the provisions of the Act, the Ombudsman may establish his or her own procedures.

During the debates when the *Ombudsman Act* was first passed there was considerable discussion as to how the Assembly would fulfil its role in making rules. The general model suggested is summed up in the following comments of the Minister responsible for the legislation at the time:

I want a committee of this House to develop the rules required. It will be a continuing committee, as I see it, not necessarily meeting constantly with the Ombudsman but from time to time as the need develops.

The Act does indicate that he can determine his own procedures but, of course, he cannot determine his own rules nor should he. It will be the committee concept . . . I see the role of the committee being to develop the rules for the Ombudsman and I would presume he would be an integral part of that committee in terms of being in attendance and pointing out what he thinks he might require.¹⁰⁸

As a result, in October 1975 a Select Committee on Guidelines for the Ombudsman was established.¹⁰⁹ It concluded that it would be premature to seek to define or recommend general rules for the guidance of the Ombudsman at that time:

. . . we are of the opinion that greater on-going experience must be gained as to the range and ramifications of this office on an intimately consultative basis, before attempting, except insofar as we have done so, a more fundamental delineation of rules.¹¹⁰

It noted further that the Ombudsman had supported this approach as well. The Committee recommended that it work closely with the Ombudsman so that it could review at a later date the need to make rules. It also recommended the creation of a permanent committee.

The Select Committee on the Ombudsman was in fact created in July 1976 and in July 1977 was given the power to make rules for the guidance of the Ombudsman.

By its *Third Report* (1977), the Committee determined that it had acquired sufficient experience in the work of the Ombudsman and outlined ten areas in which it was considering making rules.

The Committee sought the views of Members and consulted with the Ombudsman. The Ombudsmen (both Maloney and Morand since the consultation bridged their terms) felt the proposed rules were unnecessary because they were either covered by the Act or existing office procedures. Nonetheless, the Committee recommended the adoption of six of the ten rules in its *Seventh Report* (1979).

These rules addressed, among other things, the following matters:

- restrictions on the disclosure of information and expression of opinions by Ombudsman staff;
- the scope of preliminary investigations;
- the use of the language of the Act in making recommendations; and
- the Ombudsman's adherence to the requirement that reports be sent to the Premier before being sent to the Legislature.

These rules were adopted by the Assembly and continue in force.¹¹¹

Legislature's Use of Rule-Making Power

Since 1979, no further rules have been made by the Assembly. As a result, the question has been raised, and the present Ombudsman has argued, that it is no longer necessary to have a Committee to make general rules for the Ombudsman.¹¹² This is evident, the Ombudsman has argued, from the fact that the power to make rules has been rarely used and has not been used recently.

We believe that, like all aspects of our mandate, the power to make rules must occasionally be re-examined. However, before doing this, it is important to recognize why the Committee has not made greater use of its rule-making power.

During our hearings we had the benefit of former Committee Counsel John Bell's views in this respect:

. . . (this is) one of the areas where this committee probably has not done what it should have. But there is a very good reason, because going back as early as 1978, this committee and (then Ombudsman) Arthur Maloney, thought there was going to be a bill amending the *Ombudsman Act* and that all of these problems like confidentiality, secrecy and all of the other things would be addressed in legislation.¹¹³

As the Committee itself said in its *Thirteenth Report* (1986) with respect to amendments to the Act understood to be pending at that time:

. . . it is premature to consider whether any additional rules are appropriate for the guidance of the Ombudsman in the exercise of his functions. When the Committee comes to consider the amending legislation it will address the question of rules at that time.¹¹⁴

The failure to make new rules has been a function more of the expectation that amendments to the Act would be forthcoming than any belief on the Committee's part that there was no need for such rules. To date the amendments anticipated have still not been made.¹¹⁵

Nonetheless, it is appropriate at this stage to consider whether there is a continuing need to make rules, and if so, how this should be done. A number of witnesses commented on this issue during our hearings. Professor Rowat stated that the formulation of guidelines by a legislative committee would seem to be a legitimate extension of the legislation to ensure accountability and noted that the power to make rules also exists in Sweden and Finland. In this respect, similar powers exist in six of the other seven provinces which have Ombudsmen. However, with the exception of perhaps Alberta,¹¹⁶ it appears that little use has been made of the power.

In his report on government agencies, Robert Macaulay suggests that the Assembly should make greater use of its rule-making power:

It is extremely important that this link between the Legislature and the Ombudsman be recognized and understood as it has never really been acknowledged by the first Ombudsman, Mr. Maloney, or satisfactorily accepted, in my opinion, by any subsequent Ombudsman.¹¹⁷

On the other hand, one government agency felt that the existing procedures followed by the Ombudsman were working well. Professor White also cautioned the Committee against defining the Ombudsman's investigative process, arguing that any rule formulated would probably be either so vague as to be useless or so precise as to triple the already heavy paper burden. However, he felt that it might, for example, be legitimate for the Committee to put a rule in place that after a certain point in time every complainant must receive some kind of explanation as to why things have taken so long.

Perhaps the best indication of whether there is a continuing need to make rules is whether any areas in need of rules have been identified. A number of witnesses did comment on specific areas where they felt rules should be established:

- to govern how systemic reviews should be undertaken;
- to establish the criteria to be considered in determining whether a governmental organization has acted unreasonably;
- to set a timeframe during which the Ombudsman will accept complaints after an alleged incident has occurred;
- to impose an onus on the complainant to provide some explanation that he or she has been treated unfairly;
- to provide that a decision of an agency should not be judged unreasonable because its interpretation of the law or its enabling legislation differs from that of the Ombudsman;

- to govern the procedures to be followed by the Standing Committee on the Ombudsman in reviewing recommendation denied cases;
- to clarify what the Ombudsman's responsibilities are in reporting to the Legislature; and
- to set out what matters the Ombudsman's annual report should contain.

These submissions suggest that there continues to be a need for the Assembly to make rules for the guidance of the Ombudsman. The initial debates also suggest that the Legislature's rule-making role was intended to be a continuing one.

Purpose of Rule-Making Power

We believe that the formulation of rules by the Committee can advance the objectives of the Act in a number of ways. Rules can serve to clarify areas of apparent conflict between the Ombudsman and governmental organizations. We note, for example, our discussion earlier in this report of the need to consider rules to govern the manner in which systemic reviews are conducted. The procedures set out in the Act may not have fully contemplated such reviews and there is therefore a need to consider an effective and appropriate framework for carrying them out. We also believe that rules can help to provide consistency on important issues in the Office's procedures as new Ombudsmen are appointed.

An alternative to rule-making could be actual amendments to the Act. However, in our view, a rule-making power is preferable to requiring amendments to the Act in some instances, since rules can be more readily revised as circumstances change. Of course, if in considering the formulation of a particular rule it appears that it is more appropriately the subject of an amendment, this course could be pursued.

There has in the past been some confusion as to the areas in which the Committee may make rules. In our view, the power to make rules for the guidance of the Ombudsman relates to any matter which concerns the delivery of the

Ombudsman's services. This could include any aspect of the Ombudsman's investigation and reporting of complaints, as well as the Ombudsman's responsibilities with respect to communicating with and reporting to the Legislature. The Committee's power to make rules in either of these areas is of course subject to the provisions of the Act.

Consultation in Rule Formulation

The process by which rules are formulated must also be addressed. It was suggested in the original debates that the Ombudsman should be very involved in the Committee's consideration of rules and we agree. One of the proposed amendments in Bill 80 would have formalized this role. Section 7 of that bill provided:

The Assembly shall give the Ombudsman reasonable notice of its intention to make rules under subsection (1) and shall permit the Ombudsman to make representations concerning any proposed rules.

We believe that such an amendment should be made to the Act.

However, in addition to the Ombudsman, we believe the views of the agencies and individuals subject to those procedures must also be canvassed. It is important therefore to formalize their participation in the consultation process. Robert Macaulay's report recommends that government agencies be consulted in the following way:

In arriving at these rules, I would recommend that there be a working committee set up with the Council, so that a procedure can evolve that will protect the integrity of the agency system, while still enabling the work of the Ombudsman to proceed as he carries out the Act.¹¹⁸

The Council referred to, which was to be a coordinating body for administrative agencies, has not yet been created, though a similar body, the Society of Ontario Adjudicators and Regulators, has been. This organization has as its broad goal to serve the public interest through helping to improve and develop Ontario's administrative justice system. We believe that the participation of such an organization, in combination with the Ombudsman and others concerned, could help ensure that effective and meaningful rules are formulated.

We therefore recommend:

- 27. That the Act be amended to provide that the Assembly's rule-making power shall be exercised through the Standing Committee on the Ombudsman, which shall give the Ombudsman reasonable notice of its intention to make rules and shall permit the Ombudsman, and other interested parties, to make representations concerning any proposed rules.**

Review to Formulate New Rules

Having confirmed the Committee's continuing role in the formulation of rules, and suggested the process of consultation to be followed, we believe that we should consider whether in fact any new rules are required at this time. With the various areas identified above as a starting point, a process of consultation should be undertaken at the earliest possible time.

We therefore recommend:

- 28. That the Committee undertake an examination of areas in which rules should be formulated, and that this review be commenced at the earliest possible time.**

Ombudsman's Investigation of Complaints

Within the framework established by the legislation and the rules made by the Legislature, it is critically important that an Ombudsman be able to investigate

complaints without interference. The Ombudsman's ability to investigate and report incidents of government maladministration, free from government pressure, is central to any Ombudsman office. Any suggestion that a government can influence an investigation brings into question the Ombudsman's ability to perform this function.

As well as the freedom to investigate and make decisions, the original legislation also intended that the Ombudsman's decisions would not be subject to review. The Act provides that decisions of the Ombudsman may not be challenged in any court.¹¹⁹ The finality suggested is not so much a recognition of the correctness of the Ombudsman's judgements, as the fact that the Ombudsman is meant to be a last resort, the office to whom one appeals when all other appeals have been exhausted. It is also a recognition that the remedies offered by the Ombudsman are to a large extent informal ones, ultimately reflected in the fact that his or her judgments result in recommendations only. The quality of the Ombudsman's judgment will ultimately be reflected in the Ombudsman's ability to persuade the government, and the Legislature, to accept and support these recommendations.

The Act also contemplates that the Ombudsman's procedures shall not be subject to review.¹²⁰ Complainants and governmental organizations cannot, through the courts, compel the Ombudsman to conduct an investigation in a particular manner. This reflects the intention that the Ombudsman's procedure was to be an informal and flexible one, designed to address a wide range of circumstances.

For all of these reasons, the Legislature should be extremely hesitant to involve itself in any way in the Ombudsman's investigation and disposition of complaints. Historically there have been, in fact, only two areas in which both the Ombudsman and the Legislature have recognized a role for the Legislature. The first is in reviewing cases in which a governmental organization has not adequately responded to the Ombudsman's recommendations (recommendation denied cases). This role is anticipated by the Act, which provides that the Ombudsman may refer such cases to the Legislature but which does not specify the procedures to be

followed by the Legislature in reviewing these cases.¹²¹ The second is where a member of the public complains about the Ombudsman's handling of their complaint. Such complaints were not contemplated in the Act, but an approach to dealing with them has evolved over the years.

Although Committees and Ombudsmen have been creative in fashioning an effective approach for dealing with these matters, problems have arisen which must be addressed. In this section we explain how the Ombudsman and the Legislature have worked together in these areas, the problems which exist, the suggestions received in the course of our hearings, and our own recommendations on where we should go from here.

Reports Referred to the Legislature

Because the Ombudsman does not have the power to enforce his or her recommendations, he or she must rely on moral persuasion and political pressure to ensure their implementation. Where the latter is needed it is achieved through the Ombudsman making a report to the Premier, and thereafter, if the Ombudsman chooses, to the Assembly.¹²² This enables the Ombudsman to bring to the Legislature's attention a governmental organization's failure to adequately respond to the Ombudsman's recommendations, and to seek the Legislature's support in addressing the situation.

The Assembly, because of its size and the nature of its proceedings, delegates this responsibility to a Committee. Since 1976 any case which the Ombudsman has referred to the Legislature has been automatically referred to the Standing Committee on the Ombudsman, with the direction that it is to review the case and report back to the Assembly its recommendations on how the matter should be addressed.

The Committee developed a procedure which has proved effective. Traditionally, these cases have been brought to the Committee either in the form of a "special

report" or through inclusion in the Ombudsman's Annual Reports. Normally, special reports are used in situations where the Ombudsman wishes to bring cases to the Legislature's attention without waiting for the next annual report.

When the Committee receives a report, the Committee Counsel is directed to review the case and collect relevant documentation. The documents are organized and provided to Committee members after the names of complainants, public servants and other identifying references are removed.

The Committee then holds a public meeting with representatives of both the Ombudsman and the governmental organization involved. It hears first from the Ombudsman and his or her staff, in order to fully understand the circumstances of the investigation, the conclusions reached and the reasons for the decision. The Committee then hears from the governmental organization to understand why the recommendations have not been or could not be implemented. The Committee Counsel assists the Members in bringing out all of the relevant facts so that they can make an informed decision. After the Committee has heard fully from all of the witnesses, which can require a few sessions, it then, usually at a later meeting, discusses and votes on recommendations with regard to the case.

The Committee's approach to evaluating the government's response to the Ombudsman's recommendations has been described as one of "weighted neutrality" — "that is, the Committee carefully and objectively weighs the evidence presented to it, but, without automatically taking the Ombudsman's part in the dispute, tends to lean towards the Ombudsman's point of view."¹²³ More specifically, the Committee has commented that its approach should be to:

. . . review with the Office of the Ombudsman all phases of the Ombudsman's functions which were exercised in the particular complaint. It will also examine with the governmental organization in question the adequacy and appropriateness of its response. . . When it appears to the Committee that the Ombudsman has complied with the provisions of

the legislation and where the governmental organization's response is not adequate, appropriate or reasonable to the Committee, it will prima facie support the Ombudsman's recommendation.¹²⁴

Once the Committee has reached its decision, it conveys it to the Ombudsman and the governmental organization involved.

Following the Committee's decision, governmental organizations often change their position. In some instances this takes some time, and the Ombudsman has in the past continued to be involved in monitoring and assessing any developments in the governmental organization's position, and in communicating with the complainant and the Committee in this regard. Early on in the Committee's work, the Ombudsman raised the question of his or her role at this stage, and the Committee responded that:

. . . the Ombudsman should not take the position that he has "lost jurisdiction" in any sense. The complainant in question should always be able to look to the Ombudsman for assistance and relief in accordance with the *Ombudsman Act*, even though the matter is before the Committee and even when the matter is before the Legislature for debate.

When a governmental organization takes further action in consequence of an Ombudsman's recommendation, . . . the Committee can really only look to the Ombudsman for assistance and advice as to whether, in the circumstances, the further action is adequate and appropriate within the meaning of Section 22(4) (*now 21(4)*).¹²⁵

The Ombudsman has therefore monitored cases after the Committee's review. One element of this monitoring included tables in the Ombudsman's annual reports which showed the status of all cases in which governmental organizations had not yet implemented the recommendations of the Ombudsman and the Committee.

A number of witnesses commented on the effectiveness of this process. Professor Rowat noted that the Committee's role in this respect was unique internationally and that reviewing these cases is particularly valuable in giving political backing to decisions of the Ombudsman, decisions which might otherwise be ignored by a government. As well, Gail Morrison, former Director of Investigations and Legal Services with the Office of the Ombudsman, commented that the Committee's review of these cases has been helpful in a number of ways. In many instances, once the Committee has accepted a recommendation the governmental organization was quick to implement it. The Committee's role, she added, also lends weight to the Ombudsman's recommendations more generally since governmental organizations are aware that their responses may receive public scrutiny. As well, even further back in the process, bureaucrats may be more careful about how they make their decisions in the first place.

The Committee's effectiveness is also reflected in the results that have been achieved. As Table 3 below shows, the Ombudsman has referred 129 cases to the Committee over the course of the past seventeen years. In over 100 of those cases the governmental organization varied its position in some way, either in advance of or following the Committee's review. Moreover, in 85% of the cases in which the Committee either fully or partially supported the Ombudsman's recommendations, the government's subsequent response was, in the Committee's view, satisfactory.

TABLE 3

STANDING COMMITTEE ON THE OMBUDSMAN'S REVIEW OF
"RECOMMENDATION DENIED" CASES: 1975 - 1992
OUTCOME AND GOVERNMENT RESPONSE

| | Case Referred to the Committee | Cases Closed | Satisfactory Response ¹²⁶ | Unsatisfactory Response ¹²⁷ | Unresolved |
|--|--------------------------------------|-----------------|---|---|------------|
| Ombudsman's Recommendations Accepted Prior to Review | 52 | 52 | 52 | — | — |
| Ombudsman's Recommendations Fully Supported | 43 | 41 | 37 | 4 | 2 |
| Ombudsman's Recommendations Partially Supported ¹²⁸ | 14 | 13 | 12 | 1 | 1 |
| Ombudsman's Recommendations Not Supported | 20 | 20 | 4 ¹²⁹ | — | — |
| TOTALS: | 129 ¹³⁰ | 126 | 105 | 5 | 3 |

Source: Prepared by Legislative Research Service from the Ombudsman's Annual and Special Reports, 1975-76 to 1991-92, and the Standing Committee on the Ombudsman's Reports, 1976 to 1992.

The Committee's review of these cases has thus proved to be extremely effective. However, there have been questions raised as to certain aspects of the process. The first of these concerns the level of deference the Committee shows to the Ombudsman.

Deference to the Ombudsman

Although it has been stated that the Committee will lean toward the Ombudsman in making decisions, the Committee has in some instances disagreed with the Ombudsman's assessment of the facts or with the Ombudsman's conclusions and recommendations.¹³¹ It has been argued that this is inappropriate because the Ombudsman is an expert in matters of administration and because failure to support the Ombudsman in particular cases can serve to undermine the effectiveness and credibility of the Office.¹³²

A number of suggestions have been made as to how the Committee should approach these matters. Former Ombudsman Donald Morand argued that:

Just as I, as a rule, do not criticize a decision reached by a governmental organization if it could reasonably have arrived at such a decision with all the relevant facts before it, so in my view and with respect, the Committee ought not to substitute its opinion for mine, unless I could not reasonably have arrived at the conclusion and recommendation which I have — even if the Committee might have reached a different opinion on the same facts.¹³³

Another view, expressed by the present Ombudsman, is that the Committee should support the Ombudsman if it is satisfied that the mandated procedure has been followed, that the investigation was thorough and fair, and that the recommendations should, in fact, be implemented.¹³⁴

Another approach, suggested by Ms. Morrison, was that the level of deference should depend on the nature of the case. Cases involving policy issues should be examined closely since it is more appropriate for elected politicians to examine these matters than an appointed official such as the Ombudsman. On the other hand, cases involving straightforward fact-finding should not be examined as closely since this either leads to duplication or may undermine the Ombudsman's authority.

The Committee has always struggled with the level of deference it should show the Ombudsman. On the one hand, the Committee has respected the Ombudsman's judgement. At the same time, however, the Committee has found it necessary, in inquiring into the reasonableness of the Ombudsman's position and deciding whether the Ombudsman's recommendations should be implemented, to evaluate, to some extent, the Ombudsman's conclusions.¹³⁵

In attempting to strike an appropriate balance, the Committee has been continually aware of its responsibility to assure the Legislature that its support for a

recommendation was warranted. In this respect, it should be recalled that in the Committee's early years its support for the Ombudsman's recommendations did not always receive the Assembly's or the government's attention. To address this problem the Committee issued a special report in 1979, on the cover of which it stated:

The purpose of this "Special Report" is to focus the Legislature's attention solely on outstanding matters wherein recommendations of either or both of the Ombudsman and this Committee have been ignored or refused. It is the Committee's intention that its recommendations in this report will be individually debated and voted upon by the Legislature. Only when that has been done, will the Ombudsman's function have been completed. Only when that has been done, will this Committee's order of reference have been fulfilled.¹³⁶

This resulted in the recommendations therein being adopted by the Legislature and the governmental organizations concerned subsequently responding.

The Committee was reassured by the responses received in this instance. However, it also recognized that if it was going to ask the Legislature to take its recommendations seriously it had a responsibility to assure the Legislature that it had fully investigated and examined, and thoroughly reported upon, all relevant and appropriate issues.¹³⁷ For this reason the Committee has always attempted to carefully balance its respect for the position taken by the Ombudsman with its responsibility to the Legislature.

In doing this, we believe that we have contributed to both the credibility and effectiveness of the Ombudsman. While we appreciate the Ombudsman's concern that failure to support his or her recommendations could serve to undercut the credibility of the Office, we believe this will not result from our failure to support recommendations in a particular case. In our view, what is important is the frequency with which this might occur. In fact, the Committee has supported the

Ombudsman in about 75% of the cases it has considered. We believe this to be a considerable level of support.

In terms of the Ombudsman's effectiveness, it has been suggested that the failure to show greater deference to the Ombudsman may encourage governmental organizations to refuse to implement recommendations and take their chances before the Committee.¹³⁸ We question this. Most testimony suggests that under the current practice the contrary is true. As we indicated above, Ms. Morrison commented that governmental organizations are reluctant to be drawn into the Committee's review process. As well, we note that cases are often settled just prior to our hearing the matter, an indication that the government is indeed reluctant to have cases dealt with by the Committee.¹³⁹ At the same time, we are concerned that if we became less rigorous in reviewing cases and routinely supported the Ombudsman, this might make the process itself less credible, to the point where the Legislature and governmental organizations would treat our support for a recommendation as meaningless. This could return the Ombudsman and the Committee to the level of ineffectiveness which existed prior to the Committee's "special report" referred to above.

While we are therefore sympathetic to the concerns of the present and past Ombudsmen, we believe that the Committee's approach has been effective. The Committee should continue to examine closely the Ombudsman's investigation of a case and the government's response to the Ombudsman's recommendations. We will continue to show respect for the Ombudsman's judgement on the appropriate course of action to be taken, but must in the end be satisfied that the Ombudsman's recommendations should be supported. This will of necessity involve some evaluation of the Ombudsman's conclusions. We see some merit in the proposed distinction between policy-oriented cases and cases involving straightforward fact-finding, with perhaps greater deference being shown in the latter instances. We will take this into consideration in our approach to future cases.

We are confident that the Committee's role in reviewing recommendation denied cases has helped make the Ontario Ombudsman one of the most effective in the world. The Committee has in the past supported the Ombudsman in the vast majority of the cases it has considered. We expect this to continue. And we will continue to struggle in our consideration of individual cases to ensure that the credibility of the Ombudsman's office is not undermined, while at the same time fulfilling our responsibilities to the Legislature.

Monitoring Response to Recommendations

Earlier, we explained the process by which Ombudsmen in the past have continued to monitor the progress of recommendations after the Committee's review. In response to the present Ombudsman's decision to discontinue this practice, we recommended, in our *Nineteenth Report* (1991), that the Assembly pass a rule to provide that the Ombudsman shall continue to monitor cases and bring developments in the governmental organization's response to the Committee's attention.¹⁴⁰ As well, we recommended that the tables which had indicated the status of outstanding recommendation denied cases again be included in future annual reports. Both these recommendations were intended to clarify the Ombudsman's responsibilities and to ensure the continuation of previous practices.

In response to our position, the Ombudsman argued in her *Special Report* (1992) that the Ombudsman should not take a role in monitoring and reporting on the government's response to her recommendations.¹⁴¹ She argued that it would be misleading and unbecoming for the Ombudsman to determine what was appropriate after making her initial recommendation, and that her continuing involvement might suggest that there was an onus on the Office to obtain compliance. As well, she commented that it would bring disrepute to the Ombudsman and the Legislature if the annual reports showed that a government had chosen not to implement a recommendation. More generally, the Ombudsman argued that once she has referred a matter to the Legislature her responsibilities

cease, and it is for the Committee and the Legislature to determine what action to take.

A number of witnesses addressed the Ombudsman's continuing role in monitoring cases. Former Counsel, John Bell commented as follows on the Ombudsman's role:

When this Committee makes recommendations to the House that are adopted, until those recommendations are implemented, the Ombudsman has a continuing role to see or to monitor. If they're not implemented, then the Ombudsman should come back to this committee and say so and why not. There have been examples where [this has] happened and this committee has called in the head of the governmental organization with the Ombudsman and said, "Hey, what's wrong?" And you know, funny things happen. Even before the attendance the wheels are in motion to implement. That's pretty important, I think.¹⁴²

Former Ombudsman Donald Morand explained that he was the one who had instituted the practice of carrying forward in subsequent reports cases in which recommendations had not been implemented. His approach was to remove each one after three years, on the basis that at that point it was unlikely the government was going to respond. We also note that in New Brunswick, the only other province with a Committee that reviews cases in the way this Committee does, the Ombudsman follows up on those of its recommendations which their standing committee has supported.

We have considered the Ombudsman's position on this issue. We believe that the Ombudsman's view that her responsibilities should end once a report is made to the Legislature, at which point the Committee is to take over, is at odds with the vision she articulates elsewhere in her *Special Report*: "the best compliance with Ombudsman recommendations is a strong and effective committee working closely with a highly regarded Ombudsman."¹⁴³ It is this latter vision which should

guide the Ombudsman's work with the Committee in those instances where the Ombudsman has succeeded in obtaining the Committee's support for her recommendations. After our efforts have been joined in this way, we must work together to ensure that the government adequately responds.

We disagree as well that this would have the results the Ombudsman fears. The suggestion that the Ombudsman would be seen to be attempting to obtain compliance misunderstands the relationship of the Ombudsman and the Committee in this respect. As the Committee has stated in the past, it looks to the Ombudsman only for assistance and advice at this stage. This is reflected in the fact that the Ombudsman's role is to bring any problems back to the Committee and that it is for the Committee to then address them with the governmental organization involved.

We also disagree with the Ombudsman's suggestion that the use of the annual reports to track outstanding recommendation denied cases would bring disrepute to the Ombudsman and the Legislature. To the contrary, we believe the failure to do this makes it more likely that the government can use the passage of time to avoid the public scrutiny which the reviews of the Ombudsman and the Committee brought to bear on their practices. As we stated in our *Nineteenth Report*, this "would both lessen the likelihood of a governmental organization changing a practice or decision which is found to be unreasonable, and undercut the ability of the Ombudsman to obtain adequate responses in future instances."¹⁴⁴ If there is a concern about carrying forward cases indefinitely in instances in which it is clear that no further response will be obtained, then the practice of removing cases from the table after three years followed by Ombudsman Morand might be appropriate.

We believe there must be a close relationship between the Ombudsman and the Committee in monitoring the government's response to recommendations. This view was shared by previous Ombudsmen and Committees who worked closely together in following up on cases referred to the Committee, and were jointly effective in obtaining government cooperation in the implementation of

recommendations. We believe that to discontinue that practice, as the Ombudsman has suggested, would remove an important element of a successful process.

We therefore recommend:

29. That Recommendation 7 in the *Nineteenth Report (1991)* of the Standing Committee on the Ombudsman be adopted. This involves the establishment of the following rule:
 - (1) Following the submission of a report to the Assembly pursuant to s. 21(4) of the Act, the Ombudsman shall continue to monitor the governmental organization's response to the recommendations made by the Ombudsman, and by the Standing Committee on the Ombudsman, in relation to the report.
 - (2) For the purposes of ss. (1), such monitoring shall include continuing to assess the adequacy of the governmental organization's further response, bringing developments in this respect to the attention of the Standing Committee on the Ombudsman, and reporting in the Ombudsman's Annual Reports on the status of all such recommendations outstanding. (32)

Confusion over the Ombudsman's responsibilities in monitoring the implementation of recommendations is part of a more general problem with the Act's silence with respect to the Committee's involvement in considering recommendation denied cases. While our role in this respect may not have been anticipated when the Act was first passed, our consideration of these cases has now become an important and permanent aspect of the Ombudsman process.

We believe, therefore, that the Act should spell out the Committee's role in the way, for example, that the *Audit Act* addresses how the Provincial Auditor and the Public Accounts Committee are to deal with the Auditor's reports. The *Audit Act* provides that, at the Committee's request, the Auditor shall attend at the meetings of the committee in order to assist it during its review of the Public Accounts and

the annual report of the Auditor¹⁴⁵. We believe that a similar provision should be added to the *Ombudsman Act*. We therefore recommend:

30. That the *Ombudsman Act* be amended to provide that after the Ombudsman has made a report to the Assembly he or she shall continue to assist the Standing Committee on the Ombudsman in the review and consideration of the report.

Lack of Referred Cases

In her *Special Report*, the Ombudsman argues that there is no need to have a permanent Standing Committee on the Ombudsman to consider recommendation denied cases because, in her view, that significant part of the Committee's workload has disappeared.¹⁴⁶ She recommends instead that the Legislature refer reports on unimplemented recommendations to a Select Committee appointed for the purpose of dealing with that particular report. At the same time, the Ombudsman recommends that when such a select committee is established it should set aside time to familiarize itself with the nature of the Ombudsman's mandate and processes.

We believe there would be considerable risk in relying on the appointment of a select committee each time the Ombudsman refers cases to the Legislature. Whereas at present those cases are automatically referred to committee, there would need to be the political will to strike a select committee on each occasion that a case was referred to the Legislature. Since the government of the day might be particularly sensitive to the Ombudsman's report in that case, it might choose not to strike a committee. This would result in such cases not receiving the scrutiny offered by the Committee's present review.

The benefits of a permanent committee should also be recognized. As the Ombudsman suggests, any committee appointed would need to understand the Ombudsman's mandate and processes. A permanent committee offers a ready source of knowledge through the experience its members acquire in dealing with

the Ombudsman on an ongoing basis. Recognition of this fact is reflected, in our view, in the movement in other jurisdictions toward the adoption of permanent legislative committees to whom the Ombudsman can bring such cases. New Brunswick¹⁴⁷ and New Zealand¹⁴⁸ have both created permanent committees in recent years, and recommendations have been made in both Saskatchewan¹⁴⁹ and Quebec¹⁵⁰ that committees be struck to perform this role.

We also question whether the Ombudsman is correct in suggesting that recommendation denied cases have, for the most part, disappeared. The lack of recommendation denied cases is a very recent development. In fact, as Table 4 shows, prior to the past two fiscal years there had never been a year in which there were no recommendation denied cases referred to the Committee. Ombudsmen regularly referred cases to the Assembly from 1976-1989 and while the number of cases has varied each year, there has been no identifiable pattern in the number received. For example, while in 1980-81 there was only one case referred, in 1983-84 there were twenty. As well, as recently as 1986-87, 22 cases were referred to the Assembly. We therefore believe it is premature to suggest that the potential for recommendation denied cases has diminished to the point where there is no longer any benefit to having a Committee.

TABLE 4

| NUMBER OF "RECOMMENDATION DENIED" CASES REFERRED TO THE STANDING COMMITTEE ON THE OMBUDSMAN PER FISCAL YEAR | |
|---|--|
| Fiscal Year | Number of "Recommendation Denied" Cases Referred to the Committee |
| 1975 - 1976 | 1 ¹⁵¹ |
| 1976 - 1977 | 4 |
| 1977 - 1978 | 14 |
| 1978 - 1979 | 13 |
| 1979 - 1980 | 6 |
| 1980 - 1981 | 1 |
| 1981 - 1982 | 7 |
| 1982 - 1983 | 6 |
| 1983 - 1984 | 17 |
| 1984 - 1985 | 20 |
| 1985 - 1986 | 6 |
| 1986 - 1987 | 22 |
| 1987 - 1988 | 6 |
| 1988 - 1989 | 5 |
| 1989 - 1990 | 1 |
| 1990 - 1991 | 0 |
| 1991 - 1992 | 0 |
| Total: | 129 |

Source: Prepared by the Legislative Research Service from the Ombudsman's Annual and Special Reports, 1975-76 to 1991-92.

We do note, however, that no recommendation denied cases have been referred to the Assembly by the present Ombudsman. In the course of the hearings a number of witnesses offered their views on this development. Professor White suggested that it could be because bureaucrats are aware of the possibility of having to appear before the Committee and are therefore more prepared to implement recommendations. Mr. Bell commented that while there may be various reasons for this, the Committee should inquire into it. If, he added, the Ombudsman is reluctant to come forward with cases then we should do whatever is necessary to

eliminate that reluctance. Ms. Morrison commented that she might be concerned if she thought compromise was too heavy a factor. We note as well that it may be that the Ombudsman has been particularly effective in obtaining implementation of her recommendations.

The uncertainty which exists in this respect is caused in part by the fact that the Ombudsman's reports do not present information which enables the Committee to identify how well the Ombudsman's recommendations are being implemented by government. This has in the past been one of the indirect benefits of the Committee's review of recommendation denied cases.

In light of the lack of recommendation denied cases, one way to address this situation would be for the Ombudsman to inform the Legislature in the annual report of the results of cases in which the Ombudsman has recommended that a governmental organization take some course of action. In Quebec such a requirement exists.¹⁵² There, the Public Protector's annual reports must include a description of all cases in which a recommendation has been made that some action be taken, as well as those cases in which the Public Protector has had to notify the government or the Assembly that a public body has not adequately responded to a recommendation. In addition to a description of such cases, the corrective measures actually taken must be noted.

A similar requirement here would enable the Legislature to assess for itself how cooperative government is being and how effective the Ombudsman is in obtaining an adequate response to recommendations. In order to keep the number of cases workable, we believe only cases which reach the stage at which either a tentative or final report is presented to a governmental organization should be included in the annual report. Reviewing the practice followed in Quebec in presenting summaries of these cases may be of assistance to the Ombudsman.

We therefore recommend:

31. **That the Act be amended to provide that the Ombudsman shall include in each annual report a description of each case in which a formal recommendation has been presented by the Ombudsman to a governmental organization. The description of each case should include the corrective measures taken by the organization involved.**

Complaints About Ombudsman Investigations

Almost from the outset of its creation in 1976, the Committee has received letters from members of the public who had previously brought a complaint to the Ombudsman. Some asked the Committee to reconsider or reinvestigate their complaint or to overrule conclusions reached by the Ombudsman; others complained about the methods or the service provided by the Ombudsman's staff, or offered suggestions for the improved operation of the Office of the Ombudsman. While many of these complaints came from people who were simply dissatisfied with the outcome of the Ombudsman's investigation, some represented legitimate complaints about the service provided by the Office.

The Committee decided at that time that it would review such letters to determine whether they would assist the Committee in the fulfilment of its terms of reference.¹⁵³ However, the Committee recognized the importance of not second-guessing or reinvestigating the Ombudsman's decisions. It therefore established a number of policies and procedures for reviewing these complaints, which it set out for the first time in its *Twelfth Report* (1984).¹⁵⁴ These policies and procedures are as follows.

The Committee will not consider any communication if it involves a complaint which the Ombudsman is still investigating or may still investigate. In cases which it will review, the Committee refuses to act as a "court of appeal" from Ombudsman decisions and generally reviews only the Ombudsman's handling of an investigation. Even in these cases the Committee has stated that it should not,

except in the most unusual circumstances, consider recommending that the Ombudsman take some action.¹⁵⁵ The Committee makes sure that each individual is made aware of the limits on its role, so that it does not raise false hopes or unrealistic expectations.

The Committee delegates the review of these complaints to a sub-committee, which is directed to report back the results of its review. A formal procedure was established for the sub-committee to follow. These procedures addressed, among other things, what documents could be provided to the sub-committee by the Ombudsman and the arrangement of meetings between representatives of the Ombudsman and the sub-committee to discuss the complaint. To protect confidentiality, the names of individuals referred to are removed, and only documents exchanged between the complainant and the Ombudsman were examined. The complainant's authorization was provided to obtain the documents.

The Ombudsman's office has in the past felt that this approach worked well.¹⁵⁶ In this respect, the Ombudsman's Counsel in 1983 explained the Ombudsman's approach:

When the Committee receives a letter from a former complainant of the Ombudsman's office, the Clerk sends a copy to the Ombudsman's office. We (the Office of the Ombudsman) write to the complainant forthwith advising him that our office intends to cooperate fully with the Select Committee, and requesting that he execute an attached form of authorization. The letter further advises that the authorization will enable us, notwithstanding our duty of confidentiality to the complainant, to comply with any request by the Committee for copies of Reports or correspondence exchanged between the complainant and the Ombudsman's office.¹⁵⁷

These reviews have been undertaken in a cooperative manner. Previous Committees and Ombudsmen felt that the procedures adequately balanced the need

to address concerns about the Ombudsman's own actions, and the need to respect the independence and confidentiality integral to the Ombudsman's work.

Ombudsman's Duty of Confidentiality

These procedures were followed until 1990. However, the present Ombudsman concluded that she could not discuss particular cases with the Committee, as previous Ombudsmen had, or provide the limited documentation which the previous practice had provided for. The Ombudsman also suggested that the Committee should refer any concerns brought to its attention to her, which she would then re-examine herself. Under this approach, the Ombudsman would not discuss or respond to the concerns raised by the Committee. Instead, the Ombudsman would provide general information on the procedures followed, without any comment as to whether the procedure had been followed in the particular case.¹⁵⁸

We have attempted to adjust to these developments. We resolved to continue to raise concerns brought to us with the Ombudsman and to seek her response, but we varied our procedures so that we would in the future obtain documents directly from the individual involved. While this addressed the Ombudsman's decision not to provide documents, her decision not to discuss complaints with the Committee has presented more significant problems. This has meant that we are unable to obtain the Ombudsman's explanations or views on the particular issues or concerns raised by the individuals involved. For example, a few of the cases appeared to have taken too long to complete — two to two-and-one-half years. We recognized that there might have been exceptional circumstances to explain the time taken, so we wrote to the Ombudsman to ask whether there were circumstances which justified the delay in processing the complaint. However, the Ombudsman refused to provide an explanation. This made it extremely difficult to assess whether the Ombudsman had acted properly in those cases, and therefore whether any problems existed which might require the formulation of a rule.

In our *Nineteenth Report* we examined the Ombudsman's interpretation of her oath of secrecy and commented that we believed that the Act did not prevent her from providing the information which had been requested. However, we recommended that the information we had requested be provided by the Ombudsman directly to the individuals concerned. Although the Ombudsman was not prepared to act on our recommendation, when some of the individuals wrote to her subsequently and repeated our request, she did provide the information to them.

In her August 1992 *Special Report*, the Ombudsman formally responded to the Committee's recommendations. We are greatly disturbed that in the report the Ombudsman suggests that our requests for information and documentation represented an attempt to breach the Ombudsman's duty of confidentiality. Specifically, the Ombudsman states:

The Ombudsman must resist any measures which could, or appear, to violate the trust that all parties have that investigations will be conducted in a manner which protects confidentiality. If the Ombudsman allowed anyone, even a Committee of the Legislature, to breach this privacy, the confidence would be lost.¹⁵⁹

The Ombudsman referred specifically to the Committee's request for an individual's "file" and commented that the Committee had not given consideration to the confidentiality of others involved in the complaint. The suggestion is that the Committee was attempting to obtain documents provided to the Ombudsman by people other than the complainant. The Ombudsman also argued that the Committee made requests for "privileged information" and suggests that the information requested would betray the confidence of those involved in the complaint. The suggestion made is that the Committee was asking the Ombudsman to divulge information received in the course of an investigation through, for example, discussions with third parties.

There are two important points to note concerning the Ombudsman's comments. In making the assertion that the information requested required her to betray confidences the Ombudsman fails to explain the historical context in which the requests were made and the nature of the information requested. The Ombudsman does not acknowledge the fact that the request for the individual's file was made in the same form as that used with the previous Ombudsman, and was understood in this context to apply only to those documents which had been exchanged between the individual and the Ombudsman. In making the request, which was accompanied by the individual's authorization to release the documents, the Committee never expected that documents other than those available to the complainant would be provided.

Similarly, the "privileged information" the Ombudsman refers to concerned questions about her handling of complaints and requested clarification of her decisions, not the content of discussions with witnesses. Information about the Ombudsman's handling of an investigation primarily concerns the Ombudsman's actions, not information received in the course of an investigation, and is information which would be provided to a complainant. It is also information which was provided by previous Ombudsmen. They believed that the Act permitted them to discuss a complaint with a Committee where the complainant concerned had approached the Committee and asked it to examine his or her concerns.

As we have indicated, in both cases, the Committee's request for information followed procedures established by previous Ombudsmen and Committees. However, in neither instance does the Ombudsman acknowledge this. In fact, nowhere in the Ombudsman's report is there any acknowledgement that the practices the Ombudsman criticizes were developed in consultation with previous Ombudsmen. To the contrary, the Ombudsman's report suggests that the Committee's requests for information are new initiatives which represent a step backward.

The Committee accepts that Ombudsmen may have different interpretations of their duty of confidentiality under the *Ombudsman Act*. We regret, however, that the present Ombudsman has misinterpreted the Committee's intentions in requesting the information in question.

Committee's Role in Reviewing Complaints

While we are concerned about the way in which the Ombudsman has gone about changing the procedures for reviewing complaints from the public, we accept that it is the prerogative of the Ombudsman to change his or her procedures, so long as those changes are consistent with the broader objectives of the Office. We believe it is necessary therefore to consider these changes, and to re-examine our role in reviewing complaints from the public.

Witnesses who commented on these issues during our hearings were divided. Some felt that it was inappropriate for the Committee to comment at all on the manner in which the Ombudsman has conducted an investigation. Others felt that while the Committee should not review the Ombudsman's decisions, it was appropriate for the Committee to consider questions of procedural fairness. In this respect, Ms. Gail Morrison, former Director of Investigations and Legal Services with the Office of the Ombudsman, commented that:

If you reviewed her process and were concerned that there was some flaw in the process, I think at that point it would be a matter of discussion with the Ombudsman about the process. It's possible that the Ombudsman, becoming aware of the flaw, might say: "I think I want to go back and have another look at that problem. That's a problem I didn't see myself." That's not to say that you're saying the decision was wrong. I think you're saying perhaps that there was some kind of procedural mistake in the process. But I don't think you should ask that the Ombudsman change the result of a complaint which has been found not to be supported.¹⁶⁰

In our view, an important element of the approach suggested by Ms. Morrison is that the Committee's review be conducted in an informal, cooperative manner - through discussion with the Ombudsman.

We have also looked to other jurisdictions to see how such matters are addressed. In his submission to the Committee, the Alberta Ombudsman commented that he is permitted to discuss files or release documents so long as the complainant has authorized it.¹⁶¹ As a practical matter, he stated that these discussions take place with individual Members of the Assembly, since the Committee he reports to does not receive or review complaints from individuals.

The Manitoba Ombudsman explained that he was also not prevented from commenting to a Committee on the manner in which he had handled an investigation.¹⁶² However, he argued that such discussion should be at the Ombudsman's discretion and that generally speaking Committees should not review cases handled by Ombudsmen. With respect to the release of documents, he commented that he prefers to advise a Member requesting documents to obtain them from the individual involved, even where an authorization is provided.

The New South Wales *Ombudsman Act* (Australia) provides specifically that the Committee on the Office of the Ombudsman is not authorized to investigate a matter relating to particular conduct, or to reconsider the findings, recommendations, determinations or other decisions of the Ombudsman in relation to a particular investigation or complaint.¹⁶³

At the same time, the New South Wales legislation does provide for the disclosure of information to the Committee by the Ombudsman if the consent of that person has been obtained.¹⁶⁴ However, the Ombudsman must ask the Committee to take evidence in private where the person that has provided the information has informed the Ombudsman that the information is confidential. The Committee, in turn, must do so, and may not disclose or publish the evidence without the consent in writing of the witness.¹⁶⁵

We have carefully considered our role in reviewing complaints from the public. We believe that the Committee's review of such concerns over the years has served the public interest in two ways. It has given individuals who felt they had fallen through the Ombudsman's own "cracks" an opportunity to have their concerns considered. At the same time, the Committee's review has on occasion assisted it in obtaining information on any recurring problems in the work of the Office which might require it to make rules for the guidance of the Ombudsman. We continue to believe that these are worthy objectives.

We agree with those witnesses who felt that it was appropriate for the Committee to examine complaints about the Ombudsman's handling of an investigation. However, we also recognize that the informal, cooperative approach followed by previous Ombudsmen and Committees was critical to ensuring that complaints were addressed without bringing into question the independence of the Ombudsman in his or her decision-making.

In light, however, of the present Ombudsman's decision to discontinue the previous practice of discussing complaints with the Committee, this key element is no longer present. To continue to review complaints in these circumstances could lead the public to see the Committee as a body dictating how the Ombudsman should have conducted a particular investigation, rather than as a body simply assisting the Ombudsman to address concerns about the service he or she provides.

We therefore recommend:

- 32. That the Committee no longer review complaints from the public with a view to making recommendations with respect to the Ombudsman's handling of a particular case.**

There remains the question of how complaints about the service provided by the Ombudsman should be addressed. The Ombudsman has suggested that we refer complaints to her and that she examine and address them herself. We have two

concerns about this approach. The first is that complainants may question the objectivity with which the Ombudsman can evaluate the actions of his or her office. The second is that we will not have a basis on which to determine whether the complaint reflects a problem in the office which might require the formulation of a rule.

With respect to the first concern, we believe a variation of the approach suggested by the Ombudsman might be effective. Specifically, we believe that a person within the office should be assigned the responsibility of addressing these concerns. Individuals could be informed of this avenue and a formal procedure for the review of their complaints could be developed. There might also be the requirement that the Ombudsman report annually on the complaints received about his or her service and the manner in which those complaints were addressed. We believe that whatever procedure is established, it should be set out in the form of a rule made pursuant to the Assembly's rule-making power.

We therefore recommend:

- 33. That the Ombudsman establish a procedure, in consultation with the Committee, to address complaints from the public about the service provided by the Office of the Ombudsman, and that the Ombudsman report annually on the nature and disposition of the complaints received. The procedures adopted and the form of reporting should be established as rules for the guidance of the Ombudsman.**

Complainants should continue to be informed that if they have suggestions for improvement to the Office of the Ombudsman, or any comments on the service provided, they may make them to the Committee. However, if they are questioning the Ombudsman's decision or want some action be taken by the Ombudsman, then they should be referred to the internal complaints mechanism recommended.

Information to be Used in Rule Formulation

Since the Committee may continue to receive comments on the service provided by the Ombudsman, occasions will still arise when the Committee may wish to discuss with the Ombudsman his or her handling of a complaint. For example, to evaluate the significance of an individual's complaint about the length of time taken to process their original complaint, the Committee may require the Ombudsman's explanation of any exceptional circumstances that justify the time taken. While the Ombudsman has indicated that determining whether such information can be provided must be made on a case by case basis,¹⁶⁶ she has provided no such explanations.

Some of this information may in the future be available in the annual reports since we have recommended above that the Ombudsman be required to report on the types of complaints being received. However, we believe that some explanation of the Ombudsman's actions in individual cases would be particularly valuable.

We also see no reason why providing this type of information would involve breaching anyone's confidentiality expectations. In the normal case, such an explanation might simply be that the governmental organization took too long to respond, that the file had to be transferred once or twice because of staff turnover, or that the complainant had in some way been responsible for the delay. Disclosure of this information would not discourage individuals from providing information to the Ombudsman in the future, because it would not involve disclosing information which had been received in the course of an investigation.

The only assurance which would need to be given, in our view, is that the complainant consented to the Committee examining the Ombudsman's handling of their complaint. This has always been the case and an authorization would be obtained where necessary.

We recognize that as matters stand the *Ombudsman Act* is ambiguous in terms of whether such disclosure is permitted. Previous Ombudsmen have felt that it was, while the present Ombudsman does not think so. We believe that disclosure of information which concerns the Ombudsman's handling of a complaint would be reasonable and would assist in the advancement of the objectives of the Act. We believe therefore that a specific amendment to the Act should be made to permit an Ombudsman to disclose such information where the Ombudsman has received the authorization of the complainant.

The Ombudsman should still retain the discretion to determine whether he or she would be breaching the confidentiality of any other individuals involved in the investigation in disclosing such information, in which case the Ombudsman could decide not to provide the information. The amendment could also provide that the Committee would not disclose or publish the information without the consent of those concerned.

We do not believe that this amendment would give rise to uncertainty in the Ombudsman's confidentiality responsibility. We believe it will enable us to properly evaluate criticisms made by individuals about the service they have been provided. In so doing the Ombudsman will benefit by having the opportunity to respond to criticisms, and the Committee will be better able to fulfil its responsibilities under the *Ombudsman Act*.

We therefore recommend:

34. That the *Ombudsman Act* be amended to provide that the Ombudsman may disclose information which concerns his or her handling of an investigation, where the Ombudsman has received the authorization of the complainant concerned to discuss the matter with the Committee. The amendment should also provide that the Committee shall not disclose or publish the information without the consent of those concerned.

Monitoring the Office of the Ombudsman's Achievement of Its Objectives

At the beginning of this part of the report we noted that effective accountability requires that evaluation of all aspects of programs should begin by the Legislature clearly identifying tasks and goals and end by a full accounting to the Legislature for the results achieved.

This identification of tasks and goals, we have seen, is dealt with at a general level through the establishment of the *Ombudsman Act* and the objectives set out in the legislation. The more particular tasks and goals, and the means of achieving them, are conveyed on an ongoing basis through the presentation of the Ombudsman's estimates, and in the past through discussion of proposed initiatives for the coming year in the Ombudsman's annual reports. In the future, this latter function we hope will be accomplished in part through the Ombudsplan which we have recommended the Ombudsman provide at the time the estimates are to be reviewed.

In this section we examine how the Legislature assesses the Ombudsman's achievement of these objectives. The Legislature relies on two types of information to make this assessment. The primary source is through the annual report which the Ombudsman is required to present to the Legislature. The other is through audits conducted periodically by the Provincial Auditor which assess whether the Ombudsman is performing all or certain aspects of his or her functions efficiently. These two work together, since through the Legislature's review of the annual report it can identify potential problem areas which may require a more detailed audit in order to be properly assessed.

This section explores possible improvements to the manner in which the Ombudsman's annual reports are prepared and audits are conducted.

Annual Reports

The primary purpose of the Ombudsman's annual report is, in the words of one Ombudsman, to serve "as the major document of accountability to the legislature regarding the Ombudsman's performance of his duties."¹⁶⁷ A secondary, "social," purpose the reports serve is to act as a communication tool with the public and the international Ombudsman community in order to inform them of efforts by the Ombudsman with respect to the administration of his or her responsibilities.¹⁶⁸

The adequacy of the Ombudsman's reports must be measured against how well they achieve these purposes. In the course of our hearings we heard from a number of witnesses who felt that the Ombudsman's annual reports in fact provided inadequate information. Professor Rowat commented that more statistics should be included and noted that the annual reports of Ontario's Ombudsman are lacking in meaningful information, especially compared with such jurisdictions as Australia. Other witnesses commented on particular information which should be provided, such as statistics which would enable comparison of patterns from year to year, or which would indicate the responsiveness of particular agencies. Our own *Nineteenth Report* recommended that data showing the governmental organization involved and comparative statistics be included in future reports, as they had been in the past.

In addition to the concerns voiced by witnesses in our hearing, there has been criticism of the reporting practices of the Ontario Ombudsman in the past. This led in 1987 to former Ombudsman Dr. Hill requesting an independent review of his office's reporting practices.¹⁶⁹ The result was a report titled *Statistical Reporting on the Work of Ontario's Ombudsman*, prepared by John Kinley (the *Kinley Report*). It makes a number of suggestions on the information which should be compiled and included in future annual reports. In addition, Mr. Kinley stated that over the years Ombudsmen have made changes in the statistics presented with little or inadequate explanation. This has made it very difficult to

make year-to-year comparisons and generally has caused a level of confusion that "for Committee members grew to impatience and a total lack of confidence in the statistics provided."¹⁷⁰ Since the *Kinley Report*, the form and nature of the statistics have again been fundamentally changed without an explanation of how the new statistics related to those presented in the past.¹⁷¹ This has again made it extremely difficult to make comparisons with previous years. Mr. Kinley's report also stressed the need to be consistent from year to year so that the Legislature has a basis on which to identify significant changes in the work of the Ombudsman.

Development of Reporting Guidelines

We share the concerns raised in the *Kinley Report*. We believe that there are two problems underlying the Ombudsman's failure to provide consistent statistics and adequately explain changes in the information provided. One is the lack of guidance given to the Ombudsman in terms of his or her reporting responsibility. In this respect, neither the Act nor the rules provide any guidelines on the information to be included in the annual reports. The second problem is the lack of direct communication between the Ombudsman and the Legislature with respect to the information the Legislature requires.

The *Kinley Report* suggests that one possible way to address these problems would be for the Ombudsman to prepare a statistical supplement to the Annual Report in consultation with the Committee, through its counsel.¹⁷² This would have the advantage of ensuring that the statistics reflect the Committee's interests and would also provide a mechanism for the Ombudsman to explain in advance any changes in the statistics presented.

Another possibility would be for the Act to set out in greater detail the information the Ombudsman is required to provide in his or her annual reports. This is done, for example, in the *Audit Act* and the *Freedom of Information and*

Protection of Privacy Act with respect to the reporting responsibilities of the Provincial Auditor and the Information and Privacy Commissioner.

We believe that a combination of these two approaches should be pursued. We note that the *Ombudsman Act* provides the option of using the Assembly's rule-making power to set guidelines for the Ombudsman in reporting. This would provide greater flexibility than amendments to the Act, while still allowing for the establishment of definite guidelines for the Ombudsman. We believe such guidelines could be used to specify certain key information which the Ombudsman would be required to provide each year. At the same time, we believe that consultation between the Ombudsman and the Committee on the statistics included in the annual reports would enable us to more effectively convey our information needs. It would also ensure that the Assembly was informed of any changes to the statistics presented.

While we think this approach could be implemented in the preparation of the regular annual report, we see advantages to a statistical supplement. This would enable the Ombudsman to provide information specifically relevant to the Committee's evaluation of the Ombudsman's work, without, if the Ombudsman chooses, including this information in the general report presented. This is important because it recognizes that the annual report must also be accessible to the public and other bodies, who may not require the same level of detail.

We therefore recommend:

- 35. That rules be established to guide the Ombudsman in the information to be presented in the Ombudsman's annual reports; and**

That the Ombudsman consult with the Committee, through its counsel, with respect to the statistics to be provided in the annual report, and that the possibility of preparing a statistical supplement to the report be considered.

Content of Report

Although we believe specific direction as to the content of the annual reports should be left to be worked out through the continuing consultation we have recommended, we want to provide some general guidance as to the nature of the information which should be provided.

The following statement in the Lambert Commission *Report* expresses our own goals in revising the past practices followed in the Ombudsman's reporting to the Legislature:

. . . much could be gained by prescribing standards of disclosure for annual reports, standards that would transform them into documents containing a complete account of the way in which departments and agencies had fulfilled the commitments made in their Estimates. In particular, these documents should show the degree to which departments had achieved their objectives, using quantitative indicators wherever possible. . . . They would become the primary account of departmental and agency performance and would provide Parliament and its standing committees with manageable, complete, and relevant information on which to base performance reviews of the standard that Canadian taxpayers have a right to expect.¹⁷³

The annual report should therefore provide a basis upon which the Legislature can assess the Office of the Ombudsman's performance. To achieve this, the annual report must present data which accurately reflects all the work the Ombudsman's office performs and how effectively it performs it, and accurately relate that work to objectives the Legislature has determined.¹⁷⁴

In this respect, the *Kinley Report* observes that the two most relevant indicators of the Ombudsman's performance relate to complaint handling and outreach work. With respect to complaint handling there are three broad categories of statistics: *complaint characteristics* — for example, the complainant's profile, the

government organization involved, and the cause or subject-matter of the complaint; *complaint processing* — for example, duration of complaints and the stage at which complaints are resolved; and, *complaint outcome* — for example, the remedy obtained and whether the complaint was resolved in favour of the complainant or government.

Within the statistics on complaint-handling, the *Kinley Report* notes the importance of distinguishing between complaints within jurisdiction and those outside jurisdiction. The latter are complaints which, for example, are premature in the sense that the individual has not exhausted other avenues of recourse, or concern a provincial, federal or municipal agency not covered by the Act. Because such complaints are on average far less time consuming, the two types of complaints are statistically "apples and oranges."¹⁷⁵ For example, statistics on the duration of complaints should be compiled separately for each since the much larger number of complaints outside jurisdiction, and the shorter period of time taken to complete them, would otherwise lead to a misleading picture of how quickly complaints within jurisdiction, which take considerably more time, are carried out.¹⁷⁶ As a general guide, therefore, it is important for the statistics to distinguish between complaints within jurisdiction and complaints outside jurisdiction.

The other major part of the Ombudsman's work for which statistics should be provided is outreach work. The *Kinley Report* comments that it may be difficult to compile meaningful statistics in this area. Nonetheless, because this activity has been in place for a sufficiently long time, and involves significant numbers of staff, it is reasonable to expect reports on its performance.¹⁷⁷ The report suggests therefore that the Ombudsman's annual report should identify the means used to perform outreach work, the uses made of these means and, where practical, the numbers contacted.¹⁷⁸ We discussed the Ombudsman's reporting with respect to public education activities earlier and indicated the need for improvements in this respect.

Statistics which accurately reflect the Ombudsman's complaint handling and outreach work in these terms would greatly assist the Committee in identifying the nature of the Ombudsman's work and assessing its effectiveness. As we have indicated, we believe the specific data to be presented can be determined through discussion with the Ombudsman. Further ideas could also be obtained through examination of the annual reports of other provincial Ombudsmen and other Officers of the Legislature. Of course, as the *Kinley Report* suggests, it may be necessary for the Ombudsman to compile new sources of data in order to provide all the information needed. In that case, we anticipate that there may be some delay in bringing the quality of the statistics in the reports up to the standards the Legislature requires.

We therefore recommend:

- 36. That the Ombudsman's annual reports provide statistics on complaint handling and outreach work, and in particular, that the statistics presented provide a clear picture of the nature of complaints, the effectiveness with which they are processed and the nature of the outcomes achieved.**

We stressed earlier the need to develop a standardized format in the presentation of statistics. While we have indicated that the precise format to be adopted should be worked out in consultation, we noted in our *Nineteenth Report* two particular aspects of the statistics previously presented which we believed should be included in future reports. One recommendation we made was that future reports should provide year-to-year comparisons. Another was that reports should include graphs which show the number of complaints brought against particular governmental organizations and the stage at which those complaints are resolved.

In her *Special Report* (1992), the Ombudsman commented that these recommendations would be considered in the preparation of future reports. Nonetheless, we believe it is important to bring these recommendations forward

into this report, since they form a part of our overall approach to improving the Ombudsman's reporting practices.

We therefore recommend:

- 37. That the Ombudsman include in his or her Annual Reports the following information:**
- (a) comparative data from the previous fiscal year; and**
 - (b) graphs which show the number of complaints brought against a particular governmental organization and the stage at which those complaints were resolved.**

Finally, we believe that the presentation of statistics should be accompanied by some analysis of developments in the work of the Ombudsman. As with the statistics to be presented, the precise extent of such analysis can be worked out through the procedures established above for creating reporting guidelines for the Ombudsman.

Audits

Audits can serve various purposes. An "attest" audit simply involves an assessment of whether the Ombudsman's operations and financial position have been fairly represented in compliance with the Ombudsman's stated accounting policies. A "compliance" audit involves an assessment of whether the transactions and operations of the Ombudsman are in compliance with legislative and administrative requirements. Finally, and most important from a performance point of view, a "value for money" audit identifies whether money is being spent with due regard to economy and efficiency, and whether appropriate procedures have been taken to measure the effectiveness of programs.

The Ombudsman's office could be subject to any of these audits at one time or another. However, at a minimum, an attest audit must be conducted annually of the Ombudsman's financial transactions and accounts.¹⁷⁹

In practice, most audits conducted of the Ombudsman have been attest audits, though elements of the other two types have been conducted. For example, the Provincial Auditor has, in the past, examined office procedures with respect to the purchasing of goods and services, travel, the handling of employee grievances, and the recruitment of employees. As well, the Auditor has examined whether greater efficiencies could be achieved in the use of office space.

Where the Provincial Auditor has conducted an audit the results are discussed with the Ombudsman, who also provides a formal response indicating the courses of action to be taken to address any concerns raised. Any observations which the Provincial Auditor believes are significant may also be included in the Auditor's annual report. This report is in turn examined by the Public Accounts Committee. In some instances, the Public Accounts Committee can itself request that the Auditor conduct a special audit of the Ombudsman, in which case the report of the audit would be provided to the Committee, as well as the Ombudsman.

The Ombudsman, in her *Special Report*, made a number of recommendations concerning this process. Specifically, the Ombudsman argued that it is inappropriate for the Provincial Auditor and the Public Accounts Committee to be involved in auditing her office. The Provincial Auditor should not be involved, it was argued, because the Auditor conducts audits according to standards established in the *Manual of Government Administration*, (now referred to as "Management Board of Cabinet's *Directives* and Guidelines") which does not apply to the Ombudsman. Instead, the Ombudsman suggested that an auditor that can use other standards should be utilized. She therefore recommended that in the future her office be audited by a private firm of chartered accountants, rather than the provincial auditor.

The Ombudsman also recommended that the Provincial Auditor report the results of audits to the Board of Internal Economy instead of the Public Accounts Committee. This was necessary, the Ombudsman argued, because requiring her appearance before the Public Accounts Committee creates the perception that her

office is part of government since this is also the vehicle through which government is held accountable. To remove this perception the Ombudsman's office should demonstrate accountability in a way visibly separate from government.

Although the Ombudsman expresses concern about the present audit process, she does argue that audits which consider "such matters as economy, efficiency, and effectiveness in meeting objectives," should be undertaken every five years. Similarly, in our *Nineteenth Report* we noted the length of time that had gone by since any form of value for money audit had been conducted of the Office of the Ombudsman. We argued that because such audits can play an important role in improving the efficiency with which the Ombudsman provides his or her service, they should be conducted on a regular basis.

Only a few witnesses addressed these issues in our hearings. One suggested that audits which would look at productivity in the office and uncover inefficient management structure and staff morale problems should be conducted every three years. Another witness commented, in response to the Ombudsman's recommendations, that if there were concerns about the Provincial Auditor conducting the audit, one option would be to have the audit carried out by an independent firm under the coordination of the Provincial Auditor. The Auditor would direct what areas were to be examined and the standards to be applied, but the end result would be the same when it went to Committee.

Regular Value-for-Money Audits

We believe audits of a value-for-money nature should be undertaken more regularly, at least every five years. Our intention in this respect, however, would not be for a comprehensive value for money audit of the Ombudsman's entire operations to be undertaken this regularly. Rather, only certain aspects of the operations would be selected and examined, so that over time a constant review and re-examination of the efficiency of the office would be achieved.

We anticipate that the Provincial Auditor would be responsible for selecting the areas to be examined. However, at the same time, the Committee, through its role in monitoring developments in the work of the Ombudsman, might also identify activities or developments which would merit some form of audit. It would be hoped that the Auditor would then respond to the Committee's concerns at the appropriate time.

We therefore recommend:

38. That the Provincial Auditor conduct value for money audits of the Office of the Ombudsman on a regular basis.

Role of the Provincial Auditor

Although the Ombudsman recommended that the Provincial Auditor no longer be responsible for auditing her office, she has more recently accepted the Auditor's role in an audit presently being undertaken. We believe this is appropriate. The Provincial Auditor has been responsible for auditing the Office of the Ombudsman since its creation, and audits all other Officers of the Legislature.

We should point out as well that we do not share the Ombudsman's concerns about the standards used by the Auditor to conduct audits. Specifically, we do not believe that the Auditor's use of Management Board of Cabinet's *Directives and Guidelines* presents a problem. In our view, the fact that the Ombudsman is not required to adhere to the *Directives and Guidelines* does not mean that they are irrelevant in assessing whether the Ombudsman's procedures are consistent with efficient public administration practices. In any event, the Provincial Auditor is free to use whatever standards may be appropriate. We also note that while the Ombudsman suggests that different standards should be used to assess the Ombudsman's office, she does not specify what these would be.

We therefore recommend:

- 39. That the Provincial Auditor continue to be responsible for conducting audits of the Office of the Ombudsman.**

Application of Management Board of Cabinet's *Directives and Guidelines*

Although we have already indicated our view that the standards set by the *Directives and Guidelines* are generally relevant in assessing the Ombudsman's administrative practices, there remains the further question of whether the Ombudsman should be required to adhere to those *Directives and Guidelines*.

In this respect, previous Public Accounts and Ombudsman Committees expressed concern with the Ombudsman's occasional failure to adhere to the previous administrative manual, the *Manual of Administration*.¹⁸⁰ As a result, our predecessor Committee recommended that the Ombudsman be required to adopt the *Manual*. In response, the Ombudsman stated in 1984 that the office's administrative procedures manual would be reviewed and that where it was silent on a point a general statement would be included that the *Manual of Administration* would be followed where appropriate.¹⁸¹

We are concerned with an approach which leaves to the Office of the Ombudsman the ability to determine its administrative standards. Our predecessor Committee commented that the Ombudsman must be immune from any criticism respecting the use or misuse of public funds. In particular, that Committee felt that variances from the *Manual* invariably were responsible for questions raised about the Ombudsman's administrative practices.

We share these views. We believe that effective administrative practices in the Ombudsman's office can best be ensured by a clear statement that the Ombudsman is required to adhere to Management Board of Cabinet's *Directives and Guidelines*. If there is some area in which the standards set by the *Directives and*

Guidelines seem inappropriate, then these can be examined and some accommodation made.

We therefore recommend:

40. That the *Ombudsman Act* be amended to provide that the Office of the Ombudsman shall be required to adhere to Management Board of Cabinet's *Directives and Guidelines*. The Act should further provide that rules may be established to provide for the non-application of the *Directives and Guidelines* where the Committee determines that their application would be inappropriate.

Review of Audit Results

The issue of where the audit results should be considered is more complicated. While we do not share the Ombudsman's concerns about the role of the Public Accounts Committee, we believe nonetheless that other options should be considered. In this respect, the Ombudsman has suggested that the Board should have the sole responsibility for considering the audit. At present, this is the approach followed with respect to the audits of the Provincial Auditor. Presumably, the audits of all Officers of the Legislature would in the future also be referred to the Board.

The Board's involvement in this way would remove any perception that the Ombudsman was being treated in the same manner as government. However, one concern which arises is whether the Board has the institutional resources to undertake these additional responsibilities, and whether adequate procedures exist for the Board to review and report to the Assembly on the audit reports it would receive. In this respect, we note that there was considerable uncertainty as to how the Board will deal with the proposed special audit of the Office of the Ombudsman.¹⁸² Another concern is that the Board's proceedings are held in private.

A better option in our view would be to refer audits of the Ombudsman to the Standing Committee of the Ombudsman. There would be no public perception that the Ombudsman is being treated like government since by its very definition this committee recognizes the special nature of the Ombudsman as an Officer of the Legislature.

At present the *Audit Act* contemplates the Auditor reporting solely to the Public Accounts Committee. We believe that this should continue, but that the Public Accounts Committee should refer matters related to the Ombudsman to our Committee. This approach would, we believe, make it unnecessary to make any amendments to the *Audit Act*.

We therefore recommend:

- 41. That the Provincial Auditor report the results of audits of the Office of the Ombudsman to the Public Accounts Committee which shall refer them to the Standing Committee on the Ombudsman.**

Legislature's Fulfilment of Its Responsibilities

Standing Committee on the Ombudsman

The size of the Legislature and the nature of its proceedings make it impractical for it to fulfil by itself the responsibilities assigned to it with respect to the Ombudsman. For this reason, it has historically delegated its responsibilities to various legislative committees.

In choosing the appropriate body to perform the Legislature's functions in relation to the Ombudsman, it is critical that the body be independent of government influence. In this respect, for example, the domination of a committee by the government of the day could severely undercut the value of making the Ombudsman responsible to the Legislature rather than the government.

The Standing Committee on the Ombudsman is the body primarily responsible for overseeing the work of the Ombudsman. In the course of our hearings a number of witnesses commented that the Committee could be improved to better ensure that it operated in a non-partisan manner. In this respect, the Speaker commented that one way to ensure that the Ombudsman is able to operate at arm's length from government might be to look at a different balance on the Committee in terms of the representation of the parties in the Assembly. This had also been suggested by former Ombudsman Arthur Maloney in his *Blueprint for the Office of the Ombudsman*.¹⁸³

This notion of equal representation has in fact been adopted in New Zealand.¹⁸⁴ The New Zealand Officers of Parliament Select Committee, which has responsibility for the Ombudsman, has equal representation from the government and the opposition, and is chaired by the Speaker. The Committee also has a reduced membership of seven members.

While the Standing Committee on the Ombudsman has historically operated in a non-partisan manner, we recognize that there is the perception, if not the potential, for the executive to exert influence on the work of the Ombudsman through the Committee. We have considered ways to improve this situation. At present the Committee consists of twelve members, seven, including the Chair, from the government and five from the opposition parties. We believe that, not counting the Chair, there should be an equal number of members from the government and from the opposition parties combined. This could be achieved by reducing the number of government members on the Committee by one.

With this reduced membership it would be important for the Chair to continue to be a government member. This would still enable the government of the day to carry a vote. However, since under the current standing orders the Chair may not vote except in the case of a tie, the circumstances in which this would happen would be even more exceptional than at present.

We therefore believe that the membership of the Committee should be reduced to eleven, with six members drawn from the government and five members drawn from the opposition parties. Opposition membership should continue to be allocated in proportion to their standing in the House. The Chair should be elected from among the government members of the Committee. In our view, these changes will further strengthen the non-partisan nature of the Committee.

We therefore recommend:

- 42. That the Standing Orders be amended to provide that the membership of the Standing Committee on the Ombudsman shall consist of six government members and five members drawn from the two opposition parties. The Standing Orders should also provide that the Chair of the Standing Committee on the Ombudsman shall be a government member.**

Debate of Reports

A matter of continuing concern to many Committees is the manner in which Committee reports are dealt with in the House. Earlier in this Report we noted the exceptional steps taken by the Committee in its *Sixth Report (1979)* to gain the Assembly's attention and to ensure that its recommendations were debated. While for a number of years after that the Committee's reports were considered, more recent reports have not been. One suggestion to address this problem was that the Standing Orders be changed so that the Committee's recommendations would be automatically deemed to be accepted by the House unless specifically overturned within a specified time period. We believe this would be an appropriate approach.

We therefore recommend:

- 43. That the Standing Orders be amended to provide that the reports of the Standing Committee on the Ombudsman shall be deemed to be adopted within a specified time unless specifically overturned by the House.**

Proposed Terms of Reference for the Standing Committee on the Ombudsman

In light of the recommendations we have made in this report, it will be necessary to revise the terms of reference of the Standing Committee on the Ombudsman.

We therefore recommend:

44. That the Standing Orders be amended to provide that the Standing Committee on the Ombudsman shall have the following terms of reference:

The Standing Committee on the Ombudsman shall have the following responsibilities:

- to review and consider any report or recommendation submitted to the Legislature by the Ombudsman, and to report to the Legislature the results of its review, as well as its recommendations;
- to monitor and review the Ombudsman's exercise of his or her functions, and in particular:
 - to inquire into and report on any matter which the Committee believes should be brought to the attention of the Assembly; and
 - to recommend any change the Committee considers desirable to the *Ombudsman Act*;
- to review and alter, as it considers proper, the estimates presented by the Ombudsman, and to cause the estimates as altered by the Committee to be laid before the Assembly;
- to review and consider the results of audits conducted of the Office of the Ombudsman as referred to it by the Public Accounts Committee;
- to develop and introduce to the Legislature any amendments to be made to the *Ombudsman Act*;
- to make general rules for the guidance of the Ombudsman in the exercise of his or her functions;

- to place with the Assembly suitable nominations for consideration for appointment as Ombudsman;
- to discuss with the Ombudsman his or her annual Ombudsplan; and
- to provide a legislative link and sounding board for the Ombudsman, with a view to advancing the Ombudsman's fulfilment of his or her functions.

IMPLEMENTATION OF RECOMMENDATIONS

The recommendations in this report vary in the steps required for their implementation. Many of them require amendments to the *Ombudsman Act*. Others, however, require amendments to the Standing Orders of the Assembly, and a number may be fulfilled through the Committee's own initiative or the actions of the Ombudsman. Because of this, we recognize that it will be possible to implement some recommendations more quickly than others. We therefore anticipate a process which will be multi-layered, but directed ultimately to the full implementation of the Committee's recommendations.

In this respect, we appreciate that implementation of those recommendations requiring amendments to the Act may be the most time-consuming. These amendments concern, for example, matters related to the Ombudsman's complaint-review process and jurisdiction, as well as the Ombudsman's term of office, appointment process and a range of other matters. A number of these amendments follow proposals by previous Ombudsmen that have been outstanding for many years. In light of this, and given the time involved in the amendment process, we believe it is doubly important that consideration by the Assembly of these recommendations be undertaken as quickly as possible.

Many of the recommendations require changes to the Standing Orders of the Legislative Assembly. These changes are also critical since they address many fundamental matters related to the Ombudsman's relationship with the Legislature and the government, including the process of reviewing the Ombudsman's budget, legislative oversight of the Ombudsman's work, membership of this Committee and the debate of Committee reports. Implementation of these recommendations does not require amendments to the Act. We hope, therefore, that these recommendations will be debated and adopted by the Assembly at the earliest possible opportunity.

The third category of recommendations concerns matters for our own review. A number of these relate to the Committee's rule-making power and involve examining the need for new rules in a range of areas, including the content of annual reports, the conduct of systemic reviews, investigations concerning administrative tribunals and the Ombudsman's procedures for dealing with complaints about the Ombudsman's office. The Committee will undertake this review immediately. We note that we have recommended in this report that one new rule be established, which concerns the Ombudsman's role in assisting the Committee once a case has been referred to the Legislature. If adopted by the Assembly this recommendation would become a rule for the guidance of the Ombudsman pursuant to s. 15 of the Act.

Another area we have recommended for review concerns the problems that have arisen with respect to the Ombudsman and the *Freedom of Information and Protection of Privacy Act*. Again, this is a problem which requires immediate attention and we will be consulting with the Ombudsman, the Information and Privacy Commissioner and Management Board of Cabinet in the near future.

A number of the remaining recommendations are directed to either our own practices or the Ombudsman's. For example, we have recommended that we discontinue reviewing complaints from the public. We will be implementing these recommendations immediately and look forward to the changes we have recommended in the Ombudsman's practices and procedures being reflected in the Ombudsman's ongoing work.

While we have attempted to identify changes which will enhance and further the service provided by the Office of the Ombudsman to the Ontario public, we recognize that this can only be achieved through the Legislature's thoughtful consideration of our recommendations. We therefore urge the Legislature to consider and debate these recommendations, and to ensure that those recommendations it approves are implemented.

FOOTNOTES

1. Donald C. Rowat, *The Ombudsman Plan: The Worldwide Spread of an Idea*, 2nd ed., (Lanham, MD: University Press of America, 1985), pp. 109-111.
2. Ulf Lundvik, Former Chief Parliamentary Ombudsman Sweden, *The Ombudsmen in the Provinces of Canada* (Stockholm: International Ombudsman Institute, 1981), p. 5. Lundvik notes that in Swedish the officer is called *Justitieombudsman* (Ombudsman for Justice). The word "ombudsman" means simply attorney or representative and has a widespread use. See p. 1.
3. Lundvik, *Ombudsmen*, p. 1.
4. Ontario Ombudsman, *Annual Report, 1988/89* (Toronto: The Ombudsman), p. 2.
5. The only completed review of the Ombudsman concerns the possibility of expanding the Ombudsman's jurisdiction. See Standing Committee on the Ombudsman, *Expansion of the Jurisdiction of the Office of the Ombudsman* (November 1989).
6. *Ombudsman Act*, R.S.O. 1990, c. O-6, s. 21.
7. New Zealand, Office of the Ombudsman, *Brief for the Committee on Institutions Examining the Mandate, Directions, Activities and Management of the Public Protector* (Wellington: Office of the Ombudsman, 1990), submitted to Committee on Institutions of the Quebec National Assembly, p. 7.
8. Canberra, Senate Standing Committee on Finance and Public Administration, *Review of the Office of the Commonwealth Ombudsman* (Canberra: Australian Government Publishing Service, 1991), p. 18.
9. Because the criteria for categorizing "complaints" changed during this period, it is difficult to determine whether there has in fact been an increase in the overall number of complaints within jurisdiction.
10. This increase appears to reflect a shift from the category of Information Requests to Complaints Within Jurisdiction of matters dealt with through "fast action." "Fast Action" was the term used to describe the method of quickly handling less complex complaints and information requests without formally opening a file.
11. These figures are taken from the breakdown of complaints and inquiries by organization, which also provides the only breakdown of complaints by jurisdiction for the year. The total slightly exceeds the actual number of complaints and inquiries (13,732) because some complaints concerned more than one organization.

12. This decrease appears to reflect a change in the manner of recording complaints/inquiries from the Ministry of Correctional Services. Some of what were previously recorded as complaints appear to have been shifted to information requests.

13. Statistics for this year no longer use the categories of "Complaints Within Jurisdiction" and "Complaints Outside Jurisdiction." However, the new category of "Provincial Complaints" appears to correspond to the previous category of "Complaints Within Jurisdiction."

14. This increase reflects a shift from the category of "Information Requests" to "Provincial Complaints" of matters which involved the following: provincial complaints in which a referral was given or an inquiry made (2,741), no action was possible (129) and a resolution was facilitated (801). (Total = 3,671)

15. See note 12.

16. Ontario Ombudsman, *A Special Report to the Legislature* (Toronto: The Ombudsman 1992), 17 August 1992, pp. 27-29.

17. See John Kinley, *"Statistical Reporting on the Work of Ontario's Ombudsman"* (unpublished, 1987), p. 25, table 4 and p. 30 (hereafter cited as the *Kinley Report*).

18. Ontario Ombudsman, *Annual Report, 1991/92*, p. 5.

19. Quebec, National Assembly, Committee on Institutions, *Review of the Term of Office, Objectives, Activities and Management of the Public Protector, Final Report* (Quebec: National Assembly, November 1991), p. 13.

20. Ibid.

21. Netherlands National Ombudsman, "The National Ombudsman of the Netherlands: A Brief Introduction," *Fifth International Ombudsman Conference* (Vienna: The Conference, 1992), p. 25.

22. Gordon S. Earle, Ombudsman, Manitoba, 5 November 1992, letter and background information, exhibit number 1/02/035, filed with the Standing Committee on the Ombudsman 18 November 1992, p. 1.

23. John Robertson, Chief Ombudsman, Wellington, New Zealand, 3 February 1993, letter to Paul Murray, Counsel, Standing Committee on the Ombudsman, p. 3.

24. Ibid., p. 4.

25. We have examined the meaning of the term "Ombudsman." The title "Ombudsman" means a representative of the people. More specifically, in terms of the present issue, the "man" translates as "one" so that in Swedish the word Ombudsman is inclusive. See: Rowat, *The Ombudsman Plan: The Worldwide*

Spread of an Idea, p. 3; Rosalie Maggio, *The Bias-Free Word Finder* (Boston: Beacon Press, 1991), p. 206.

26. Arthur Maloney, Q.C., *Blueprint for the Office of the Ombudsman in Ontario* (Toronto: *The Ombudsman*, 1979), p. 346.

27. The survey classified respondents as "more vulnerable" if any of the following conditions were met: the respondent said that he or she was a member of a racial minority; the respondent had come to Canada sometime in the last five years; the respondent was for health reasons limited in the things he/she can do on a day-to-day basis; the respondent was a single parent. See Ontario Ombudsman, *Annual Report, 1990/91*, p. 41.

28. Australia, Administrative Review Council, *Access to Administrative Review by Members of Australia's Ethnic Communities* (Report No. 34), (1991) AGPS, Canberra.

29. Senate Standing Committee on Finance and Public Administration, *Review of the Office of the Commonwealth Ombudsman*, pp. 74-76.

30. Committee on Institutions, *Final Report, 1991*, pp. 10-12.

31. Ontario Ombudsman, *Annual Report, 1991/92*, pp. 2-3.

32. See p. 76 in this report.

33. See Recommendation 36.

34. M. Zacks and E. Buckstein, eds., *The Annotated Ombudsman Act* (Toronto: n.p. 1990, p. 45).

35. Maloney, *Blueprint*, pp. 385-86.

36. Ontario, Legislative Assembly, Select Committee on Guidelines for the Ombudsman, *Votes and Proceedings*, 30th Parliament, 1st Session (11 December 1975): 97.

37. Zacks and Buckstein, *Annotated Ombudsman*, p. 45.

38. New Zealand *Ombudsmen Act 1975*, No. 9, s. 16.

39. Maloney, *Blueprint*, p. 431.

40. Zacks and Buckstein, *Annotated Ombudsman*, p. 159-60.

41. Robertson, *Brief for Committee on Institutions*, p. 9.

42. Committee on Institutions, *Final Report, 1991*, p. 24.

43. Harley Johnson, Alberta Ombudsman, Edmonton, Alberta, letter to Quebec Public Protector, tabled with the Committee on Institutions, Quebec National Assembly, 17 December 1990, p. 3.
44. Norman Geschke, Ombudsman, Victoria, Australia, letter to Quebec Public Protector, tabled with the Committee on Institutions, Quebec National Assembly, 22 November 1990, p. 5.
45. Telephone interview with Patrick Robardet, Director of Research, Office of the Public Protector, Quebec City, 4 March 1993.
46. Information and Privacy Commissioner/Ontario, Order P-239, Re: Ministry of Government Services, Appeal Number 890187, p. 21.
47. The Ombudsman appeared before the Standing Committee on the Legislative Assembly in October 1991 during the course of its review of the *Freedom of Information and Protection of Privacy Act*. See Ontario, Legislative Assembly, Standing Committee on the Legislative Assembly, *Hansard: Official Report of Debates*, 35th Parliament, 1st Session (23 October 1991): M-285.
48. *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, s. 67.
49. The Ombudsman refers to the criteria suggested in the *Williams Commission Report*. See *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy* (Toronto: Queen's Printer of Ontario, 1980), pp. 308-312.
50. Ontario, Management Board of Cabinet, *Report on s. 67(2) of The Freedom of Information and Protection of Privacy Act* (Toronto: The Board, March 1989), p. 6.
51. *Ombudsman Act*, s. 12.
52. When the Act was first passed in 1987 it was decided that a review of these provisions should be undertaken to determine how they should relate to the Act. In 1989, the Standing Committee on the Legislative Assembly undertook this review and made recommendations which were incorporated in the Act. An important part of the Committee's review was the report by Management Board of Cabinet. See Ontario, Legislative Assembly, Standing Committee on the Legislative Assembly, *Report on Confidentiality Provisions* (Toronto: The Committee, 1989).
53. Management Board of Cabinet, *Report on s. 67(2)*, p. 15.
54. Zacks and Buckstein, *Annotated Ombudsman*, p. 17.
55. See Maloney, *Blueprint*, p. 441; and the *Tenth Report of the Select Committee on the Ombudsman* (1983), pp. 17-18, Schedule 3, s. 9.

56. *Third Report of the Select Committee on the Ombudsman (1977)*, pp. 75-78.
57. Ibid.
58. Ontario Ombudsman, *Annual Report, 1987/88*, p. 3.
59. S.R. Ellis, Chair, Workers' Compensation Appeals Tribunal, submission to the Standing Committee on the Ombudsman dated 14 January 1993, pp. 3-4, exhibit number 043.
60. Zacks and Buckstein, *Annotated Ombudsman*, p. 30.
61. Ellis, submission, 14 January 1993, p. 5.
62. *Ontario (Ombudsman) v. Ontario (Ministry of Financial Institutions)*, (1989) 71 O.R. (2d) 678 (Div. Ct.), p. 681.
63. Ontario, Legislative Assembly, *Hansard: Official Report of Debates*, 34th Parliament, 2nd Session (21 November 1989), p. 4092.
64. Standing Committee on the Ombudsman, *Expansion of Jurisdiction of the Office of the Ombudsman* (1989), p. 4.
65. Maloney, *Blueprint*, pp. 383-84.
66. Dr. Daniel G. Hill, Ombudsman of Ontario, "Expanded Jurisdiction: A position paper on expanding the jurisdiction of the Ombudsman" presented to the Standing Committee on the Ombudsman, 23 September 1986, p. 8.
67. Standing Committee on the Ombudsman, *Expansion of Jurisdiction of the Office of the Ombudsman*.
68. Canada, Royal Commission on Financial Management and Accountability (Allen Lambert, Commissioner), *Final Report* (Hull: Canadian Government Publishing Centre, 1979), p. 21. Hereafter cited as *Lambert Commission Report*.
69. Ibid., p. 369.
70. Donald C. Rowat, "Why a Legislative Ombudsman is Desirable" (unpublished, Ottawa: Carleton University, 1992), p. 3.
71. Ontario, Legislative Assembly, Standing Committee on the Ombudsman, *Hansard: Official Report of Debates*, 35th Parliament, 2nd Session (18 August 1992): B-33.
72. A similar three-stage approach is suggested in the *Lambert Commission Report*, pp. 274-75.

73. *Audit Act*, R.S.O. 1990, c. A.35, s. 16.
74. Telephone interview with Ms. Pam McHugh, Counsel, Office of the Ombudsman, Alberta, 16 February 1993.
75. K. Wiltshire, *The Ombudsman and the Legislature* (Canberra: Fourth International Ombudsman Conference, 1988), p. 156.
76. David Landa, Ombudsman for New South Wales, *Special Report to Parliament Pursuant to Section 31 of the Ombudsman Act — The Independence and Accountability of the Ombudsman* (19 July 1990), pp. 9-10.
77. *Statutory Appointments Legislation (Parliamentary Veto) Amendment Act 1992*, No. 43, New South Wales, Australia.
78. Canberra, Senate Standing Committee on Finance and Public Administration, *Review of the Office of the Commonwealth Ombudsman* (Canberra: Australian Government Publishing Service, 1991), pp. 108-109.
79. New Zealand, Office of the Ombudsmen, *Report of the Ombudsmen, 1992* (Wellington: The Office, 1992), pp. 7-9.
80. *Audit Act*, s. 3.
81. Ontario, Legislative Assembly, Standing Committee on the Legislative Assembly, *Report on Appointments to the Public Sector*, 33rd Parliament, 2nd Session, tabled on June 26, 1986, p. 33.
82. U. Kempf and M. Mille, "The Role and the Function of the Ombudsman: Personalized Parliamentary Control in 48 Different States," in *Fifth International Ombudsman Conference*, p. 24.
83. See: Ontario, Legislative Assembly, *Hansard: Official Report of Debates, Legislative Debates*, 29th Parliament, 5th Session (10 June 1975): 2843.
84. Arthur Maloney, Q.C., *Blueprint for the Office of the Ombudsman in Ontario* (Toronto: The Ombudsman, 1979), p. 421.
85. *Ombudsman Act 1974 No. 68*, R.S.A., New South Wales, s. 31C (3) (Australia).
86. New Zealand, Report of the Finance and Expenditure Committee, *Report on the Inquiry into Officers of Parliament*, 42nd Parliament, 1st Session, 1989, p. 10. This recommendation has been adopted.
87. *Hansard*, 18 August 1992, p. B-27.
88. Graham White, *The Ontario Legislature: A Political Analysis* (Toronto: University of Toronto Press, 1989), p. 200.

89. *Standing Orders of the Legislative Assembly of Ontario*, ss. 58-64.
90. White, *A Political Analysis*, p. 152.
91. *Lambert Commission Report*, p. 55.
92. Maloney, *Blueprint*, p. 422.
93. *Ibid.*, pp. 422-23.
94. Robertson, *Brief for the Committee on Institutions*, p. 2.
95. *Ibid.*, p. 4.
96. *Ombudsman Act*, R.S.A., c. O-7, s. 10.1.
97. Saskatchewan, Office of the Ombudsman, *Report of the Ombudsman* (Saskatoon: The Office, 1988), p. 2; Quebec, National Assembly, Committee on Institutions, *Review of the Term of Office, Objectives, Activities and Management of the Public Protector, Final Report* (Quebec: National Assembly, November 1991), pp. 18-19. However, it appears that, instead, the Bureau de l'Assemblée, the National Assembly's equivalent to the Board of Internal Economy, may assume responsibility for approving the Public Protector's budget (Telephone interview with Jacques Meunier, Deputy Public Protector, Protecteur du Citoyen, Quebec, 19 January 1993).
98. See *Lambert Commission Report*, pp. 274-75.
99. *Hansard*, 25 August 1992, p. B-65.
100. *Ibid.*, s. 4.
101. This is a variation on a distinction drawn by Professor Graham White between answerability and liability. See White, *A Political Analysis*, pp. 206-207.
102. See, for example, Maloney, *Blueprint*, pp. 401-402.
103. See *Lambert Commission Report*, p. 286.
104. *Hansard*, 20 August 1992, p. B-55.
105. Robertson, *Brief for the Committee on Institutions*, p. 4.
106. Ontario, Legislative Assembly, Select Committee on the Ombudsman, *Second Report of the Select Committee on the Ombudsman*, 30th Legislature, 4th Session (Toronto: The Committee, 1977), p. 53.
107. *Ombudsman Act*, s. 15.

108. *Hansard*, 19 June 1975, p. 3153.
109. Ontario, Legislative Assembly, *Votes and Proceedings*, 30th Parliament, 1st Session (11 December 1975): 96.
110. *Ibid.*, pp. 96-97.
111. R.R.O. 1990, Reg. 865.
112. Ontario Ombudsman, *A Special Report to the Legislature* (Toronto: The Committee, 1992), p. 37.
113. *Hansard*, 25 August, 1992, p. B-68.
114. Ontario, Legislative Assembly, *Thirteenth Report of the Standing Committee of the Ombudsman* (Toronto: The Committee, 1986), p. 24.
115. Although, in 1989, amendments were introduced but only received first reading. See Bill 80, An Act to Amend the Ombudsman Act and the Child and Family Services Act, 1984, 2nd Sess., 34th Leg. Ont 38, Eliz. II, 1989 (first reading 21 November 1989).
116. A number of rules have been passed in Alberta which relate primarily to the Ombudsman's management and operation of the Office (Telephone interview with Ms. Pam McHugh, Counsel, Office of the Ombudsman, Edmonton, Alberta, 16 February 1993).
117. R. Macaulay, *Directions: Review of Ontario's Regulatory Agencies Report* (Toronto: Queen's Printer, 1989), p. 6-11.
118. Macaulay, *Directions*, p. 6-13.
119. *Ombudsman Act*, s. 23.
120. *Ibid.*, s. 23.
121. *Ibid.*, s. 21(4).
122. *Ibid.*
123. B. Goodman, "The Ontario Legislature's Select Committee on the Ombudsman," *Osgoode Hall Law Journal* 21:3 (September 1983): 374.
124. *Fifth Report of the Select Committee on the Ombudsman* (1978), p. 98.
125. *Ibid.*, p. 97.

126. Cases in which the original recommendations by the Standing Committee on the Ombudsman have been satisfactorily implemented.

127. Cases in which the original recommendations by the Standing Committee on the Ombudsman have not been satisfactorily implemented.

128. Cases in which the Standing Committee on the Ombudsman agreed in principle with the Ombudsman's recommendation(s) but disagreed, to some extent, with the Ombudsman's recommended method of addressing the problem.

129. Although not supporting the Ombudsman's recommendation, the Standing Committee made recommendations which were satisfactorily implemented.

130. Where a number of complaints have been referred as a group and dealt with as one matter by the Committee they have been counted as one case. For example, the *North Pickering* matter (Ombudsman's first special report, tabled 15 July 1976) originally involved 44 individual complaints but has been treated as one complaint for the purposes of the total number of cases. It should also be noted that the total of 129 does not include instances where the Committee examined specific recommendations and observations by the Ombudsman concerning matters of recurring concern with respect to a governmental organization, or where the Committee examined issues it identified through reviewing the Ombudsman's summary of particular complaints.

131. Goodman, "Ontario Legislature's Select Committee," p. 375.

132. See *Ibid.*, and *Special Report*, pp. 36-37.

133. Goodman, "Ontario Legislature's Select Committee, p. 375.

134. *Special Report*, pp. 36-37.

135. In its *Twelfth Report* (1984), the Committee acknowledged this dilemma. See p. 35.

136. *Sixth Report of the Select Committee on the Ombudsman* (1979).

137. *Seventh Report of the Select Committee on the Ombudsman* (1979), p. III.

138. Goodman, "Ontario Legislature's Select Committee," p. 375.

139. See Table 3 in paper. There have been 52 cases which have been resolved after being referred to the Committee but prior to the Committee's hearing.

140. *Nineteenth Report of the Standing Committee on the Ombudsman* (1991), p. 32.

141. *Special Report*, pp. 31-32.

142. *Hansard*, 25 August 1992, p. B-69.

143. *Special Report*, p. 37.
144. *Nineteenth Report*, p. 29.
145. *Audit Act*, s. 16.
146. *Special Report*, p. 34.
147. New Brunswick, Office of the Ombudsman, *Annual Report, 1990* (Fredericton: Office of the Ombudsman), p. 26.
148. Robertson, *Brief for the Committee on Institutions*, p. 4.
149. Saskatchewan, *Report of the Ombudsman*, 1988, p. 2.
150. Committee on Institutions, *Final Report*, November 1991, p. 18.
151. Where a number of individual complaints have been referred as a group and dealt with as one matter by the Committee they have been counted as one case. For example, the "one" case referred in the 1975-76 fiscal year was the *North Pickering* matter which involved 44 individual complainants.
152. *Public Protector Act*, R.S.Q., c. P-32, s. 28.
153. See *Fifth Report* (1978), p. 100.
154. See *Twelfth Report of the Select Committee on the Ombudsman* (1984), Schedule 2 and *Seventeenth Report of the Standing Committee on the Ombudsman* (1989), Appendices A-D.
155. *Seventeenth Report (1989)*, Appendix B.
156. Goodman, "Ontario Legislature's Select Committee," p. 387.
157. *Ibid.*, p. 386.
158. *Special Report*, pp. 16-17. See also the Ombudsman's testimony to the Committee in *Hansard*, 3 April 1991, p. B-2.
159. *Special Report*, p. 17.
160. *Hansard*, 26 August 1992, pp. B-87-88.
161. Harley Johnson, Ombudsman, Alberta, letter to Franco Carrozza, Clerk, Standing Committee on the Ombudsman, 17 September 1992, p. 3. The Assembly has in fact established a rule which provides that the Committee may not have access to documents in files unless it has the individual's authorization (Telephone interview

with Ms. Pam McHugh, Counsel, Office of the Ombudsman, Alberta, 16 February 1993).

162. Gordon S. Earle, Ombudsman, Manitoba, 5 November 1992, letter and background information, pp. 5-6, exhibit number 2/02/035, filed with the Standing Committee, 18 November 1992.

163. *Ombudsman Act 1974 No. 68*, R.S.A., New South Wales, s. 31B (2)(Australia).

164. *Ibid.*, s. 34(1)(b).

165. *Ibid.*, s. 31H.

166. See correspondence from Ontario Ombudsman to the Standing Committee on the Ombudsman, 2 March 1992, p. 4.

167. Earle, Manitoba, p. 10.

168. See: Committee on Institutions, *Final Report*, p. 20.

169. Ontario Ombudsman, *Annual Report, 1987/88*, p. 6.

170. John Kinley, "Statistical Reporting on the Work of Ontario's Ombudsman" (unpublished, 1987), pp. 9-10 (hereafter cited as the *Kinley Report*).

171. See the changes which occurred between the Ombudsman's annual reports for 1989-90 and for 1990-91.

172. *Kinley Report*, p. 11.

173. *Lambert Commission Report*, pp. 107-108.

174. Ontario Ombudsman, *Annual Report, 1987/88* (Toronto: The Ombudsman), p. 6.

175. See *Kinley Report*, Table 4, pp. 25 and 30.

176. *Kinley Report*, p. 30.

177. *Ibid.*, p. 41.

178. *Ibid.*, pp. 60-61.

179. *Ombudsman Act*, s. 10.

180. See: *Report of the Public Accounts Committee* (1983), Rec. 6; *Second Report of the Select Committee on the Ombudsman* (1977), p. 45; and, *Eleventh Report of the Select Committee on the Ombudsman* (1983), p. 42.

181. Ontario, Office of the Provincial Auditor, *Annual Report, 1984* (Toronto: The Ministry, 1984), pp. 127-28.

182. The approach recently accepted by the Ombudsman before the Public Accounts Committee will see the audit results themselves go to the Board, but any matters of particular concern to the Auditor will be reported to the Assembly as a whole, presumably through either a special or annual report.

183. Maloney, *Blueprint*, p. 395.

184. Telephone interview with John F. Robertson, Chief Ombudsman for New Zealand, 20 January 1993.

LIST OF RECOMMENDATIONS

SCOPE OF THE OMBUDSMAN'S FUNCTION

Systemic Reviews

1. That the Committee consider, as part of its proposed review of the need for new rules, whether there is a need to formulate rules to govern how the Ombudsman conducts investigations of a systemic nature. (12)

AWARENESS AND ACCESSIBILITY

Public Education and Outreach

2. That the Ombudsman present, as part of an annual ombudsplan, proposed public education initiatives for each fiscal year.
3. That the Ombudsman, in developing a public education program, target those groups least likely to be aware of the Ombudsman's services, and that information on the process followed in reviewing complaints be provided; and

That government departments and agencies be required to make information on the Ombudsman's services available at all public service contact points.

4. That the Ombudsman report annually on the public education activities undertaken, and that this include a statement of specific objectives, the nature and number of activities undertaken, and an evaluation of how effective those programs were in advancing the stated objectives. (24)
5. That the Act be amended to provide that the Ombudsman may engage in public education to inform members of the public of the Ombudsman's function. (24)

COMPLAINT-REVIEW PROCESS

Complaints in Writing

6. That the Act be amended to provide that:
 - a complaint to the Ombudsman may be made orally or in writing:

- a complaint which is made orally shall be put in writing as soon as practicable; and
- the Ombudsman or his or her employees shall provide assistance in the formulation of a complaint to any person who requires it. (26)

Public Comment on Investigations

7. That the Act be amended to provide that the Ombudsman may, where he or she considers it to be in the public interest or in the interests of any person or governmental organization, comment publicly in order to make known the existence of an investigation or the outcome of a particular case; and

That the amendment should further provide that no such comments may be made during the course of an investigation and that no such comments may be made concerning the merits of a complaint to be investigated or for the purpose of achieving implementation of the Ombudsman's recommendations. (30)

Special Reports on Performance of Duties

8. That the Act be amended to provide that the Ombudsman may make special reports to the Assembly respecting any matter relating generally to the performance of the Ombudsman's duties. (30)

Problems With Respect to the *Freedom of Information and Protection of Privacy Act*

9. That the Standing Committee on the Ombudsman consult with the Ombudsman, the Information and Privacy Commissioner and Management Board of Cabinet, to determine whether confidential information provided by the Ombudsman to governmental organizations should be specifically exempted from disclosure under the *Freedom of Information and Protection of Privacy Act*. (37)

Court Applications to Interpret Provisions of the Act

10. That s. 14(5) of the Act be amended to provide that the Ombudsman may apply to the Divisional Court for a declaratory order,
 - (a) concerning the Ombudsman's jurisdiction to investigate any case or class of cases under this Act; or

- (b) concerning the interpretation of any provision of this Act. (38)

Government's Ability to Implement the Ombudsman's Recommendations

Payments to Complainants

11. That the Act be amended to enable governmental organizations to make payments to complainants where the Ombudsman has recommended that such a payment be made. (39)

Ability to Reconsider Decisions

12. That the Act be amended to provide that governmental organizations which do not already have a power to reconsider their decisions may authorize the reconsideration of a decision or recommendation upon receiving a recommendation of the Ombudsman to do so; and

That the Act be amended to provide that notice of the reconsideration shall be given to those who were entitled to be heard with respect to the original decision, and to provide that those individuals be given the opportunity to make representations respecting the reconsideration of the decision. (41)

JURISDICTION

Schedule of Organizations

13. That the Act be amended to provide that for the purposes of the Act a governmental organization includes a governmental organization set out in the Schedule;

That the Act be amended to provide that the Lieutenant Governor in Council may add governmental organizations to the Schedule by order; and

That the Committee consult with the Ombudsman and any governmental organization concerned to identify the form of the Schedule. (43)

Clarification of Existing Jurisdiction

Administrative Tribunals

14. That the Committee consider, as part of its proposed review of the need for new rules, whether there is a need to formulate rules to govern how the Ombudsman conducts investigations of tribunal decisions. (47)

Cabinet Decisions

15. That the Act be amended to provide that the Ombudsman does not have the jurisdiction to review Cabinet decisions. (49)

**RELATIONSHIP BETWEEN THE OMBUDSMAN
AND THE LEGISLATURE**

The Mandate and Funding of the Ombudsman

The Legislative Framework

16. That the Standing Orders of the Legislative Assembly be amended to provide that the Committee shall monitor and review the Ombudsman's exercise of his or her functions and report any changes to the *Ombudsman Act* that the Committee considers desirable. (58)
17. That the *Ombudsman Act* be amended to provide that the Ombudsman shall, at the request of the Standing Committee on the Ombudsman, attend at the meetings of the Committee to assist it in the fulfilment of its mandate. (58)
18. That the proposed terms of reference of the Standing Committee on the Ombudsman, as set out in Recommendation 44 of this report, be included in the *Ombudsman Act*. (59)
19. That responsibility for developing and introducing amendments to the *Ombudsman Act* be assigned to the Standing Committee on the Ombudsman; and

That the procedures which govern the consideration of government bills apply to amendments introduced by the Committee. (60)

Appointment Process

20. That s. 3 of the *Ombudsman Act* be amended to provide that the Ombudsman shall be appointed by the Lieutenant Governor in Council on the address of the Assembly only after a unanimous recommendation of the Standing Committee on the Ombudsman. (62)

Term of Office

21. That s. 4(1) of the *Ombudsman Act* be amended to provide for a term of office of six years. (64)

22. That s. 4(2) of the *Ombudsman Act* be removed. (65)

Funding

23. That the estimates of the Ombudsman no longer be referred to the Estimates Committee but that in the future those estimates be referred to the Standing Committee on the Ombudsman; and

That the process followed for the review of other estimates under the Standing Orders apply, and in particular that the Committee's proceedings be held in public and briefing material be provided as required by the Standing Orders. (71)

24. That the *Ombudsman Act* be amended to provide that the Ombudsman shall present his or her estimates directly to the Standing Committee on the Ombudsman; and

That the Act be amended to provide that the Committee shall review and, as it considers proper, alter the estimates presented by the Ombudsman and cause the estimates as altered to be laid before the Assembly. (73)

Direction and Control of the Ombudsman's Office

Operation and Management of the Office

25. That the Standing Orders of the Legislative Assembly be amended to provide that the Committee shall monitor and review the Ombudsman's exercise of his or her functions, which shall include inquiring into and reporting on any matters which the Committee believes should be brought to the attention of the Assembly. (78)
26. That the Standing Orders of the Legislative Assembly be amended to provide that the Committee shall discuss with the Ombudsman his or her annual ombudsplan which shall set out major projects for the forthcoming year. (80)

Rules for the Guidance of the Ombudsman

27. That the Act be amended to provide that the Assembly's rule-making power shall be exercised through the Standing Committee on the Ombudsman, which shall give the Ombudsman reasonable notice of its intention to make rules and shall permit the Ombudsman, and other interested parties, to make representations concerning any proposed rules. (87)

28. That the Committee undertake an examination of areas in which rules should be formulated, and that this review be commenced at the earliest possible time. (87)

Ombudsman's Investigation of Complaints

Reports Referred to the Legislature

29. That Recommendation 7 in the *Nineteenth Report (1991)* of the Standing Committee on the Ombudsman be adopted. This involves the establishment of the following rule:
- (1) Following the submission of a report to the Assembly pursuant to s. 21(4) of the Act, the Ombudsman shall continue to monitor the governmental organization's response to the recommendations made by the Ombudsman, and by the Standing Committee on the Ombudsman, in relation to the report.
 - (2) For the purposes of ss. (1), such monitoring shall include continuing to assess the adequacy of the governmental organization's further response, bringing developments in this respect to the attention of the Standing Committee on the Ombudsman, and reporting in the Ombudsman's Annual Reports on the status of all such recommendations outstanding. (32) (100)
30. That the *Ombudsman Act* be amended to provide that after the Ombudsman has made a report to the Assembly he or she shall continue to assist the Standing Committee on the Ombudsman in the review and consideration of the report. (101)
31. That the Act be amended to provide that the Ombudsman shall include in each annual report a description of each case in which a formal recommendation has been presented by the Ombudsman to a governmental organization. The description of each case should include the corrective measures taken by the organization involved. (105)

Complaints About Ombudsman Investigations

32. That the Committee no longer review complaints from the public with a view to making recommendations with respect to the Ombudsman's handling of a particular case. (112)
33. That the Ombudsman establish a procedure, in consultation with the Committee, to address complaints from the public about the

service provided by the Office of the Ombudsman, and that the Ombudsman report annually on the nature and disposition of the complaints received. The procedures adopted and the form of reporting should be established as rules for the guidance of the Ombudsman. (113)

34. That the *Ombudsman Act* be amended to provide that the Ombudsman may disclose information which concerns his or her handling of an investigation, where the Ombudsman has received the authorization of the complainant concerned to discuss the matter with the Committee. The amendment should also provide that the Committee shall not disclose or publish the information without the consent of those concerned. (115)

Monitoring the Office of the Ombudsman's Achievement of Its Objectives

Annual Reports

35. That rules be established to guide the Ombudsman in the information to be presented in the Ombudsman's annual reports; and

That the Ombudsman consult with the Committee, through its counsel, with respect to the statistics to be provided in the annual report, and that the possibility of preparing a statistical supplement to the report be considered. (119)

36. That the Ombudsman's annual reports provide statistics on complaint handling and outreach work, and in particular, that the statistics presented provide a clear picture of the nature of complaints, the effectiveness with which they are processed and the nature of the outcomes achieved. (122)

37. That the Ombudsman include in his or her Annual Reports the following information:

- (a) comparative data from the previous fiscal year; and
- (b) graphs which show the number of complaints brought against a particular governmental organization and the stage at which those complaints were resolved. (123)

Audits

38. That the Provincial Auditor conduct value for money audits of the Office of the Ombudsman on a regular basis. (126)

39. That the Provincial Auditor continue to be responsible for conducting audits of the Office of the Ombudsman. (127)
40. That the *Ombudsman Act* be amended to provide that the Office of the Ombudsman shall be required to adhere to Management Board of Cabinet's *Directives and Guidelines*. The Act should further provide that rules may be established to provide for the non-application of the *Directives and Guidelines* where the Committee determines that their application would be inappropriate. (128)
41. That the Provincial Auditor report the results of audits of the Office of the Ombudsman to the Public Accounts Committee which shall refer them to the Standing Committee on the Ombudsman. (129)

Legislature's Fulfilment of Its Responsibilities

Standing Committee on the Ombudsman

42. That the Standing Orders be amended to provide that the membership of the Standing Committee on the Ombudsman shall consist of six government members and five members drawn from the two opposition parties. The Standing Orders should also provide that the Chair of the Standing Committee on the Ombudsman shall be a government member. (131)

Debate of Reports

43. That the Standing Orders be amended to provide that the reports of the Standing Committee on the Ombudsman shall be deemed to be adopted within a specified time unless specifically overturned by the House. (131)

Proposed Terms of Reference for the Standing Committee on the Ombudsman

44. That the Standing Orders be amended to provide that the Standing Committee on the Ombudsman shall have the following terms of reference:

The Standing Committee on the Ombudsman shall have the following responsibilities:

- to review and consider any report or recommendation submitted to the Legislature by the Ombudsman, and to report to the Legislature the results of its review, as well as its recommendations;

- to monitor and review the Ombudsman's exercise of his or her functions, and in particular:
 - to inquire into and report on any matter which the Committee believes should be brought to the attention of the Assembly; and
 - to recommend any change the Committee considers desirable to the *Ombudsman Act*;
- to review and alter, as it considers proper, the estimates presented by the Ombudsman, and to cause the estimates as altered by the Committee to be laid before the Assembly;
- to review and consider the results of audits conducted of the Office of the Ombudsman as referred to it by the Public Accounts Committee;
- to develop and introduce to the Legislature any amendments to be made to the *Ombudsman Act*;
- to make general rules for the guidance of the Ombudsman in the exercise of his or her functions;
- to place with the Assembly suitable nominations for consideration for appointment as Ombudsman;
- to discuss with the Ombudsman his or her annual Ombudsplan; and
- to provide a legislative link and sounding board for the Ombudsman, with a view to advancing the Ombudsman's fulfilment of his or her functions. (133)

APPENDIX 'A'

LIST OF WITNESSES

STANDING COMMITTEE ON THE OMBUDSMAN
REVIEW OF THE OFFICE OF THE OMBUDSMAN
2ND SESSION, 35TH PARLIAMENT
WITNESSES

Robert Gateman

Margaret Hutchinson

David Warner, M.P.P.
Chair, Board of Internal Economy
Legislative Assembly

Hon. Donald R. Morand
Former Ombudsman

Delbert Dupré

Graham White
Professor, Department of Political Science
University of Toronto

John P. Bell
Former Legal Counsel to the Committee

ONTARIO SEPARATE SCHOOL TRUSTEES' ASSOCIATION
Mary Hendriks, President
Patrick Slack, Executive Director

H. Gail Morrison
Former Director of Investigation
Office of the Ombudsman

ONTARIO MUNICIPAL BOARD
John Kruger, Chair

ONTARIO ASSOCIATION OF CHILDREN'S AID SOCIETIES

Diane Cresswell, Manager of Communications

Ray Muldoon, Executive Director, Norfolk Family and Children's Services

Kim Way, Youth in Care and OACAS Summer Student

Professor Donald Rowat

Department of Political Science

Carleton University

Robert C. Macaulay, Q.C.

(Author of The Directions : Review of Ontario's
Regulatory Agencies Report)

ONTARIO PUBLIC SERVICE EMPLOYEES' UNION

Fred Upshaw, President

Tim Little, Legislative Liaison

ONTARIO HOSPITAL ASSOCIATION

Dennis Timbrell, President

THE LAW SOCIETY OF UPPER CANADA

Allan A. Rock, Treasurer

Richard Tinsley, Secretary

ONTARIO PUBLIC SCHOOL BOARD'S ASSOCIATION

Gail Nyberg, Treasurer

Mike Benson, Executive Director

ONTARIO HOME WARRANT PROGRAM

Barry Rose, President and Registrar

Reginald Ryan, Chairman of the Board

APPENDIX 'B'

LIST OF EXHIBITS

STANDING COMMITTEE ON THE OMBUDSMAN
REVIEW OF THE OFFICE OF THE OMBUDSMAN
2ND SESSION, 35TH PARLIAMENT

E X H I B I T S

| | |
|-------------------------|---|
| EXHIBIT NO. 2/02/001 | DON PAZARATZ - Letter dated 6 August 1992 with respect to the Office of the Ombudsman. |
| EXHIBIT NO. 2/02/002 | GERALD N. BALM - Letter dated 4 August 1992 with respect to the Office of the Ombudsman. |
| EXHIBIT NO. 2/02/003 | BILL METZGER - Letter dated 30 July 1992 with respect to the Office of the Ombudsman. |
| EXHIBIT NO. 2/02/004 | LILIAN M. CHURCHILL - Letter dated 6 August 1992 with respect to the Office of the Ombudsman. |
| EXHIBIT NO. 2/02/005 | N. M. POULANTZAS - Letter dated 5 August 1992 with respect to the Office of the Ombudsman. |
| EXHIBIT NO. 2/02/005(A) | N. M. POULANTZAS - Letter dated 19 August 1992 and four studies dealing with the Ontario Human Rights Commission and the Ontario Office of the Ombudsman. |
| EXHIBIT NO. 2/02/006 | DELBERT DUPRÉ - Letter dated 4 August 1992 with respect to the Office of the Ombudsman. |
| EXHIBIT NO. 2/02/007 | H. GAIL MORRISON - Submission with respect to the Office of the Ombudsman. |

EXHIBIT NO. 2/02/008

ONTARIO MUNICIPAL BOARD -
Submission dated 11 August 1992
from John Kruger, Chairman, with
respect to the Office of the
Ombudsman.

EXHIBIT NO. 2/02/009

OMBUDSMAN ONTARIO - Special
Report to the Legislature, dated 17
August 1992, from Roberta
Jamieson, Ombudsman.

EXHIBIT NO. 2/02/010

PROVINCE OF BRITISH
COLUMBIA, OMBUDSMAN -
Submission dated 19 August 1992
from Dulcie McCallum, Ombudsman,
on the review of the Office of the
Ombudsman.

EXHIBIT NO. 2/02/011

HALIFAX, NOVA SCOTIA,
OFFICE OF THE OMBUDSMAN -
Submission dated 14 August 1992
from Victoria M. Goldring,
Investigator, regarding background
information on the review of the
Office of the Ombudsman.

EXHIBIT NO. 2/02/012

ROBERT RUNCIMAN, MPP -
Paper published in the Canadian
Parliamentary Review/Autumn 1984
entitled "Ombudsmen and
Legislatures: Allies or Adversaries?".

EXHIBIT NO. 2/02/013

ONTARIO SEPARATE SCHOOL
TRUSTEES' ASSOCIATION -
Submission on the review of the
Office of the Ombudsman.

EXHIBIT NO. 2/02/014

ONTARIO ASSOCIATION OF
CHILDREN'S AID SOCIETIES -
Submission regarding the expansion
of jurisdiction of the Ombudsman.

EXHIBIT NO. 2/02/015

CHINESE CANADIAN
NATIONAL COUNCIL, TORONTO
CHAPTER - Submission from Avvy
Go, President, on the review of the
Office of the Ombudsman.

EXHIBIT NO. 2/02/016

MARGARET CONNOLLY -
Submission dated 24 August 1992 on
the review of the Office of the
Ombudsman.

EXHIBIT NO. 2/02/017

THE MANAGEMENT BOARD OF
CABINET - Submission dated 27
August 1992 from Glenna Carr on
the review of the Office of the
Ombudsman.

EXHIBIT NO. 2/02/018

PROFESSOR DONALD C. ROWAT
8- Articles entitled "Reflections on
the Ombudsman Concept" published
in the Nova Scotia Ombudsman's
Annual Report for the year ending
December 31, 1991; "Why a
Legislative Ombudsman" paper
presentation at the annual convention
of the United States Association of
Ombudsman, 28 May 1992; and
"The Role of the Ombudsman",
keynote address to the First San Juan
Ombudsmanship Congress.

EXHIBIT NO. 2/02/018(A)

PROFESSOR DONALD C. ROWAT
- Article entitled "Why Democracies
Need a Legislative Ombudsman".

EXHIBIT NO. 2/02/018(B)

PROFESSOR DONALD C. ROWAT
- Article entitled "Why an
Ombudsman to Supervise the
Courts?" published in the
Ombudsman Journal 10 (1992).

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| EXHIBIT NO. 2/02/018(C) | PROFESSOR DONALD C. ROWAT - Article entitled "Why a Legislative Ombudsman is Desirable". |
| EXHIBIT NO. 2/02/018(D) | OMBUDSMAN AND OTHER COMPLAINT-HANDLING SYSTEMS SURVEY, No. 13 - Compiled by Donald Rowat, 1987. |
| EXHIBIT NO. 2/02/018(E) | PROFESSOR DONALD C. ROWAT - Letter responding to questions posed during Committee hearings. |
| EXHIBIT NO. 2/02/019 | ALGOMA COMMUNITY LEGAL CLINIC INC. - Submission dated 2 September 1992 on the review of the Office of the Ombudsman. |
| EXHIBIT NO. 2/02/020 | ONTARIO FEDERATION OF AGRICULTURE - Submission from Roger George, President, on the review of the Office of the Ombudsman. |
| EXHIBIT NO. 2/02/021 | ONTARIO PUBLIC SCHOOL BOARDS' ASSOCIATION - Submission dated 4 September 1992 on the review of the Office of the Ombudsman. |
| EXHIBIT NO. 2/02/022 | JOHANNA BISCHOPING - Submission on the review of the Office of the Ombudsman. |
| EXHIBIT NO. 2/02/023 | J. A. KHODADEEN - Letter dated 4 September 1992 on the review of the Office of the Ombudsman. |
| EXHIBIT NO. 2/02/024 | ONTARIO HEALTH DISCIPLINES BOARD - Submission on the review of the Office of the Ombudsman. |

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| EXHIBIT NO. 2/02/024(A) | ONTARIO HEALTH DISCIPLINES BOARD - Case brief for submission to the Ombudsman of Ontario. |
| EXHIBIT NO. 2/02/025 | INFORMATION AND PRIVACY COMMISSIONER/ONTARIO - Submission dated 11 September 1992 on the review of the Office of the Ombudsman. |
| EXHIBIT NO. 2/02/026 | ONTARIO MUNICIPAL ADMINISTRATORS' ASSOCIATION - Submission dated 14 September 1992 from M. R. Sather, Secretary-Treasurer, on the review of the Office of the Ombudsman. |
| EXHIBIT NO. 2/02/027 | OFFICE OF THE OMBUDSMAN, PROVINCE OF ALBERTA - Response to questionnaire from Harley Johnson, Ombudsman, on the review of the Office of the Ombudsman. |
| EXHIBIT NO. 2/02/027(A) | OFFICE OF THE OMBUDSMAN, LEGISLATIVE ASSEMBLY, GOVERNMENT OF ALBERTA - 25th Annual Report for the period January 1, 1991 to December 31, 1991. |
| EXHIBIT NO. 2/02/028 | ONTARIO HUMAN RIGHTS COMMISSION - Submission on the review of the Office of the Ombudsman. |
| EXHIBIT NO. 2/02/029 | R. FARNDEN - Letter dated 22 September 1992 on the review of the Office of the Ombudsman. |

EXHIBIT NO. 2/02/030

CLIFFORD LANGLEY - Letter dated 1 September 1992 on the review of the Office of the Ombudsman.

EXHIBIT NO. 2/02/031

PROTECTEUR CITOYEN, QUEBEC - Questions and answers prepared by Patrick Robarlet, legal counsel, to the Standing Committee's questionnaire on the Ombudsman (Ontario).

EXHIBIT NO. 2/02/031(A)

PROTECTEUR CITOYEN, QUEBEC - Réponses du questionnaire.

EXHIBIT NO. 2/02/032

ASSOCIATION OF MUNICIPAL CLERKS AND TREASURERS OF ONTARIO - Letter dated 3 November 1992 from James Gubinczki, President, stating that the Association cannot support expanding the mandate of the Ombudsman to include mmunicipal matters.

EXHIBIT NO. 2/02/033

ONTARIO PUBLIC SERVICE EMPLOYEES UNION - Submission entitled "Continuing the Graceful Balance".

EXHIBIT NO. 2/02/033(A)

ONTARIO PUBLIC SERVICE EMPLOYEES UNION - A brief dated July, 1992, concerning reform of the Public Hospitals Act entitled "Care and Quality, Health care for people, not profit".

EXHIBIT NO. 2/02/034

ONTARIO HOSPITAL ASSOCIATION - Presentation by Dennis Timbrell, Chairman.

EXHIBIT NO. 2/02/034(A)

ONTARIO HOSPITAL ASSOCIATION - Submission on the review of the Office of the Ombudsman.

EXHIBIT NO. 2/02/035

OMBUDSMAN MANITOBA -
Response dated 5 November 1992 to
questionnaire on the review of the
Office of the Ombudsman.

EXHIBIT NO. 2/02/036

THE METROPOLITAN TORONTO
SCHOOL BOARD - Response dated
6 November 1992 to the question of
whether the jurisdiction of the
Ombudsman should be expanded to
include school boards.

EXHIBIT NO. 2/02/037

THE LAW SOCIETY OF UPPER
CANADA - Presentation by Allan
Rock, Treasurer, on the review of
the Office of the Ombudsman.

EXHIBIT NO. 2/02/038

ONTARIO PUBLIC SCHOOL
BOARDS' ASSOCIATION -
Submission on the review of the
Office of the Ombudsman.

EXHIBIT NO. 2/02/039

ONTARIO NEW HOME
WARRANTY PROGRAM -
Presentation on the review of the
Office of the Ombudsman.

EXHIBIT NO. 2/02/040

A S S O C I A T I O N O F
MUNICIPALITIES OF ONTARIO -
Response dated 4 December 1992
with respect to the review of the
Office of the Ombudsman and issues
which could affect municipalities.

EXHIBIT NO. 2/02/041

MINISTRY OF MUNICIPAL
AFFAIRS - Response to request for
comments on the review of the Office
of the Ombudsman.

EXHIBIT NO. 2/02/042

GREY ASSOCIATION FOR
DEVELOPMENT AND GROWTH -
Submission from Rosemary
Dickenson, Chairperson, into the
review of the Office of the
Ombudsman.

EXHIBIT NO. 2//02/043

S. R. ELLIS - Written submission to
the review of the Office of the
Ombudsman.

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